United States Court of Appeals

for the Second Circuit

APPENDIX

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75-1153

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

JACKSON D. LEONARD,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

Vol. II—143 to 1029

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INDEX

	PAGE
Docket Entries	1a
Indictment	5a
Defendant Jackson Leonard's Memorandum of Law in Support of Certain Pre-Trial Motions	9a
Notice of Pre-Trial Motions	16a
Endorsement	21a
Affirmation of Robert A. Fried, in Support of Motion	22a
Bill of Particulars	24a
Affidavit of W. Cullen MacDonald, in Opposition to Motion	26a
Affidavit of Robert Schulman	29a
Affidavit of Joseph J. Tragna	30a
Affidavit of Bernard M. Singer	31a
Affidavit of John Alleva	32a
Affidavit of Norman Levy	33a
Affidavit of W. Cullen MacDonald	34a
Supplemental Bill of Particulars	36a
Supplemental Bill of Particulars	37a

PAGE

Notice of Motion for Leave to Inspect Affirmative Vote and Dismiss Indictment 38a

Affidavit of John J. Tigue, Jr. 39a

Defendant's Preliminary Requests to Charge 44a

Defendant's Supplemental Requests to Charge 65a

Government's Requests to Charge 67a

Memorandum of Law 69a

Notice of Motion for Judgment of Acquittal and a New Trial 70a

Affidavit of John J. Tigue, Jr. 71a

Affidavit of Arnold Reiner 75a

Affidavit of Jerry Sussman 76a

Affidavit of Mortimer Laski 77a

Pretrial Interviews 79a

January 6, 1974 ..... 79a

Mortimer Laski 80a

January 3, 1975 ..... 138a

Joseph J. Tragna 139a

Robert Schulman 211a, 525a

Letters Rogatory 448a

PAGE

Pretrial Interviews 452a

January 6, 1975 ..... 452a

Arnold Reiner 452a

January 2, 1975 ..... 476a

Jerry Sussman 477a

Bernard M. Singer 487a

John Alleva 504a

Norman Levy 510a

Trial Testimony 252a, 1

1. Opening Statement on Behalf of Government 20
2. Opening Statement on Behalf of Defendant 31
3. Motion for a Mistrial 585
4. Motion for a Mistrial, Denied 585
5. Motion to Disciss 585, 829
6. Motion to Dismiss Denied 768, 829
7. Defendant's Summation to Jury 843
8. Government's Summation to Jury 912
9. Charge of the Court 959
10. Sentence 1024

Notice of Appeal 1029

AFTERNOON SESSION

1:50 p.m.

(Trial resumed; jury not present)

THE COURT: Mr. MacDonald, in reading 3500(e)(2), on the record as it presently stands, whatever the basis of your witness sheets reflecting accurately what the witness was going to say in your anticipation, there is no showing that this is a substantially verbatim recital of an oral statement recorded contemporaneously with the making of the oral statement.

Mr. Tigue, you are at liberty, however appropriately, to establish that that is so, as I see it, through Mr. Mitchell and/or through Mr. MacDonald, as the case may be, as the matter develops. But, as I see it on this record, the fact that Mr. MacDonald has written down in 3505A, in the first person, what he expects the witness to testify to, and the witness testifies using English language in a common situation, has written it down in common language that is commonly used, that does not make it a 3500 statement.

MR. TIGUE: Your Honor, one, I would ask Mr. MacDonald and the Court whether in fact it was recorded contemporaneously. Because if it was not, I think it is a moot question.

THE COURT: I think so too. If Mr. MacDonald wants to respond to that, I will hear such a response.

MR. MacDONALD: I can't pinpoint with precision the date on which these notes were put on these first three pages, which is what we are dealing with. It has to be within the last seven to ten days, as I recall, because the exhibit numbers that I employed have been assigned to those exhibits within that time period and not earlier.

My recollection is that during that time I spoke with Mr. Mitchell for only a short period of time in advance of Mr. Tigue's intending to have an interview, and that this witness sheet was either prepared in advance of or following that short witness that we had awaiting Mr. Tigue's arrival. I do not think that we discussed these matters, since we had discussed most of these matters at an earlier time last summer or earlier last fall. I think I did it last evening as I was preparing the witness sheet and did not do it at the time. I am talking about as a whole. I see a scratched-out provision where I made a change, and the first one that pops to my mind is, I usually sign three, and I have penciled in to my notes this morning that that is incorrect, and I do note that Mr. Mitchell told me this morning that the original he kept in his office.

It may be that a word or two here or there were

put on a piece of paper at that short meeting with Mr. Mitchell. But in the main, with the exception of that scratching out, on page 1, I can represent that none of the other materials were put on at that session.

MR. TIGUE: Your Honor, I don't mean to accuse Mr. MacDonald for a minute on his representation, but it seems to me the appropriate manner of solution -- and I dislike taking the Court's time -- is that in my experience what happens is that somebody might make a number of notes, but then they will ask the witness something and they will be careful to write down exactly what he says, and then sometimes even that one sentence is read back to the witness and you will ask, "Is this exactly what happened?" or "Is this what you said?", and he reads it back and he says yes.

Now, I think that is either an adoption within subparagraph 1 or, if not, just that little portion is substantially verbatim.

I don't mean to suggest that the whole thing that the Court is examining is all 3500 material, I really don't know, but my guess is that -- and it is only a guess -- there are portions which are substantially verbatim. Those I would respectfully request be turned over.

I am really lacking in understanding why the government is resisting on this, unless it is inconsistent

with what Mr. Mitchell said, in which case I think I would doubly have the right to it.

THE COURT: If I thought that anything here was of that kind of assistance to you, I would be more exercised about it than I am. I do not think that any of this is going to be of use to you in the traditional sense. However, Mr. Mitchell, just standing right where you are, and considering that you are still under oath, do you recall Mr. MacDonald's writing down on any occasion anything that you were saying on any of the visits that you had?

THE WITNESS: During the period of visit, there were -- at least two, I think, maybe three -- yes, he made notes, which would be, you know, asking some kind of a question, and then it would be obviously what I consider not a verbatim note but it was a reminder or look into this or check that -- I don't know what they said, but they were there. Because it only took, like, like that (indicating), and it was down.

THE COURT: You observed him making some kind of notation after he was speaking; right?

THE WITNESS: Correct, yes.

THE COURT: On any of these occasions did you have occasions to look at what was written by Mr. MacDonald on a sheet of yellow paper?

THE WITNESS: No. I couldn't even tell you the color of the paper.

THE COURT: So you never looked at what he wrote.

THE WITNESS: No.

THE COURT: Do you have any recollection of his ever reading to you what he had written down to ask you if it was accurate?

THE WITNESS: No, nothing at all. It was only these types of documents,you know, that are being brought into the picture.

THE COURT: Mr. Tigue, do you want to ask a question or two or not?

MR. TIGUE: No, I don't believe so.

THE COURT: Do you need to get from Mr. MacDonald anything beyond what he has put on the record already?

MR. TIGUE: I would say no, not for this witness, but I do envision there to be substantial problems. Incidentally, I won't be long with Mr. Mitchell. The next I believe is the UCC man who will put in the checks. The third witness will be Mr. Laski. I would request a recess after Mr. Laski's testimony.

THE COURT: To discuss these problems?

MR. TIGUE: Yes.

THE COURT: Mr. Mitchell, we will have you resume

THE WITNESS: We are going to continue from where we were; right?

THE COURT: I trust.

THE WITNESS: I didn't get a chance to answer, you know. You threw it at me, and then you recessed.

THE COURT: You were asked to look at it, and now you have looked at it.

THE WITNESS: Yes.

(Jury present)

H E N R Y M I T C H E L L, resumed.

MR. TIGUE: Your Honor, also before we begin, I marked as Defendant's Exhibit D my art work on the board there, and I have shown it to Mr. MacDonald's assistant. I guess that has to be in evidence, does it?

THE COURT: It would be deemed part of the record.

MR. TIGUE: I would offer it in evidence, your Honor.

THE COURT: Very good.

MR. MacDONALD: No objection.

THE COURT: No objection. Received.

(Defendant's Exhibit D was received in evidence.)

CROSS-EXAMINATION (continued)

BY MR. TIGUE:

Q Mr. Mitchell, I asked a question if that refreshes

your recollection; then we had a conference and we went to lunch. Do you remember the question?

A Vividly.

Q All right.

THE COURT: I think you asked him just to look at it and refresh his recollection as to the exhibit, and you were then going to put a question.

Q Well, does that refresh your recollection, Mr. Mitchell, that there was some contemplated litigation in connection with the dispute?

A Yes, it does refresh my mind, but I do feel that perhaps maybe I should give you a little bit of a background as to the way we interpret this type of a letter. I had forgotten even when one came.

Q The question is, if you recall, on direct examination, was there any litigation in connection with this, and I believe you said that litigation to you meant lawyers come in and make a cause celebre. Right?

A Right, correct.

Q And just to get a simple answer to the question: Is that what you would consider litigation, the letter before you?

A No.

Q I guess you had better tell us your explanation.

A Good. Thank you. This kind of a letter, as you will note, came in the 17th or 18th of November. You observe the settlement that was made on the termination was actually signed on the 3rd of December. So that is approximately two weeks.

Q Yes.

THE COURT: What year?

THE WITNESS: Of the same year, '69.

THE COURT: All right.

A Now, this is the actual signing of the settlement. This is the date that Jack Leonard's lawyers wrote the letter, into our legal department, not to me.

Q Yes. What date is that?

A November 17 is the date on the letter.

Q Yes.

A So assume it was received a day or two later. It is addressed to the Union Carbide Legal Department, which consists of about 150 lawyers. And it goes in and it has to go through a system some way or other to find out, like, who is Leonard Process, who is involved, those sorts of things. That is "big companyitis," as I am sure you will appreciate.

OK, I don't know what it took, but let's say a few days anyway? And eventually I suppose I got a phone

call from the legal department, somebody, about it. By this time I am sure it was Thanksgiving. We were in the final throes of settlement with Jack Leonard and Treadwell as well at that particular time, they had an involvement as well, in claims and other matters, which are the subject of what is here.

Now, in that short period of time that it took -- and, remember, an agreement like this, the settlement, even when it is agreed to, still takes a couple of days of a lawyer writing it and, you know, going through what takes place.

So there is only a few days involved where there could have been anything that could have happened. And as far as I am concerned and the way I conveyed it, I am sure, to our legal department, is that this is just what I call the usual threat to improve the settlement on a job in the last waning days. And I say literally days; it was probably a few days before the settlement was actually made.

Q During the course of --

A Excuse me. So that's the reason that I don't consider that anything more than a negotiation tool, going even this far.

Q During the period of the dispute in 1969, whenever that began, there were no additional payments made under the

contract, is that right?

A Excuse me, I don't quite understand what you are saying. Say it again, perhaps?

Q During 1969, before this dispute was settled, UCC was not making any payments to Jack Leonard or his company?

A No, we were not -- the accounting fellow will have to verify this -- but to my knowledge Jack Leonard was paid everything as it was set forth in the contract. The matters that were not being paid during 1969, that you allude to, are the ones that are in the letter here, which are design changes, which are always subject to negotiation; the claims in connection with, let's say, the nonworking parts of the plant at Taft which were in dispute -- those sorts of things. And the cancellation fee. These were all intended to be a final negotiation. OK?

Q Right. And pending that final payment, whatever -- the last payment in the contract was held up until all these disputes were resolved; is that right?

A That's because the contract provided for it.

Q Yes, but that is a fact?

A Oh, I thought you --

Q That is a fact? I am not arguing with you.

A Yes.

Q You were not the person who handled the approval of the invoices and who would do the mechanical work to see that the payments were made pursuant to the contract, were you?

A That is correct. Shawver did that.

Q And I think you mentioned this morning a firm by the name of Geigy. Is that G-e-i-g-y?

A Yes.

Q Is that a firm based in Switzerland?

A I guess so. They are a pharmaceutical too, are they not?

Q Yes.

A I think so.

Q Also I think you were asked on direct examination with respect to the assignment; I think that is part of the exhibit on your right there, Government's Exhibit 65.

MR. TIGUE: I wonder if I might just read briefly from those documents, your Honor, to the jury. It is in evidence.

Maybe I had better read from the original.

Members of the jury, the first -- the second letter in time and attachment, but I believe the first one in time is dated February 1, 1968. It is on the letterhead of the Leonard Process Company. It is addressed to Mr.

Mitchell.

"Dear Mr. Mitchell:

"Effective February 1, 1968, the Leonard Process Co., Inc., purchased the assets and business of the Leonard Process Company. The existing business will be carried on without any change whatsoever, utilizing the same personnel and providing the same services and responsibilities to clients. As president, I will continue to supervise the corporation's affairs. Please mark your accounts to reflect the switch in the corporate form of operation.

"Sincerely yours

"The Leonard Process Co. Inc.

"By Jackson D. Leonard, president."

Q Under the terms of the agreement, Mr. Mitchell, Union Carbide Corporation had agreed to accept the assignment; is that correct?

A No.

MR. MacDONALD: I think there is a provision that --

THE WITNESS: It can't be assigned.

MR. MacDONALD: We would ask that the specific provision be referred to.

MR. TIGUE: I withdraw the question.

THE WITNESS: I would like to see the contract, because usually we have no rights of assignment whatsoever

unless you agree.

Q Let me withdraw the question.

If you take a look at Government's Exhibit 65, this is a letter by you to the Leonard Process Co. Inc.; is that right?

A Yes.

Q Now, just take a look at that for a minute, and we will get to the contract. Okay?

A We have the contract here. I'm sorry. Okay. Am I supposed to say something?

Q Under the terms of the contract, you would agree to any assignment, is that correct?

A We had to agree. There was no possibility unless we agreed.

Q So your letter of March 1968 to the Leonard Process Company was essentially say, "We consent to the assignment provided the following conditions are met" is that right?

A Yes.

Q And the essence of the conditions were that Jack Leonard would still be responsible for the performance of the contract, is that right?

A Yes.

MR. TIGUE: I have no further questions.

I offer Defendant's Exhibit C for identification in evidence.

May I read the last line?

(Mr. Tigue read to the jury from Defendant's Exhibit C.)

xx REDIRECT EXAMINATION

BY MR. MAC DONALD:

Q To your knowledge, were any monies held up in the fall of 1967, two years before this letter was written, in regard to this threatened litigation?

A In regard to that?

Q If we consider this threatened litigation, this threatening letter --

MR. TIGUE: I object.

THE COURT: Sustained as to form. Give him the exhibit, Mr. MacDonald, and go forward on that basis.

Q In November and December of 1967, and January 1968, approximately two years before the date of the letter before you, had any monies been held up that were due and owing and payable to Mr. Leonard?

A Well, I can't answer it just with a simple "yes". None to my knowledge, first of all, all right, of what were the normal schedule of payments and expenses as set forth in the contract. If you classify claims for design extras that weren't resolved as a hold-up, then, yes, because these design changes had been made but agreement had not been reached on it because between the engineering department and Jack Leonard's group.

Now, this is a normal thing in a contract.

Q Were causes to be asserted in addition to those set forth in the schedule of payments?

A Oh, yes, correct. They are extras, special.

MR. MAC DONALD: That's all.

MR. TIGUE: I have no further questions.

THE COURT: All right. Thank you.

(Witness excused.)

MR. MAC DONALD: I call Mr. Czajkowski.

xx V I C T O R B. C Z A J K O W S K I, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

MR. MAC DONALD: May I proceed, your Honor?

THE COURT: You may.

xx DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Czajkowski, will you tell the jury your occupation, please?

A Yes, I am manager of the accounts payable for Union Carbide Corporation.

Q Where is your office located?

A In Tarreytown, New York.

Q And how long have you held that position?

A I have held the manager's position since July 1971.

Q Prior to that, did you have a position in the same department?

A Yes, about March of '66 I was the assistant manager of the accounts payable.

Q And in that time frame where was the accounts payable department physically located?

A In '66?

Q Yes.

A 270 Park Avenue, New York.

Q Will you tell the Court the practice in Union Carbide in '66 and '67 and '68 how a bill gets paid?

A Yes, the invoice goes to the location of the Union Carbide in the U. S. that ordered the material or the service.

The location compares the invoice against their purchase order or contract and a receivable report. Once having verified the correctness of the bill in relation to the other documents, the bill is processed into my office for payment to the party.

Q And will you describe what happens on its arrival at your office as a result of that process?

A Surely. All invoices that come into my department go through what we call a pre-audit routine. From pre-audit they go to a vendor code clerk.

He looks at each invoice, looks at the vendor's name and address, and ascertains that they have it in their vendor's master file.

Once having found it in their vendor's master file they assign what we call a vendor code number to that particular invoice.

From that point, the invoices go to our keypunch group, who key in certain data contained on each invoice that's processed for payment.

Q Will you describe to the jury please, what that data consists of?

A This data consists of a vendor code, a due date for each invoice and the due date represents the date on which it is due for payment in accordance with the terms of our purchase order or contract, an accounting unit, an accounting unit location number, a transmittal number, a vendor's invoice number, the net amount that we want to pay the vendor, and a purchasing commodity code. From that --

Q Will you continue?

A They keypunch group keys that data in, and then the data having been keypunched is processed through our computer. The invoices then come back to my department and I get a printout, what we call an IBM scroll, more commonly referred to as an invoice register, comes back to my depart-

ment, and this register is a print-out of the data that the keypunch group has keyed in. It goes to what I call a final audit group within my department.

This group makes a comparison of the vendor's name and address on a hard copy invoice as compared to how it appears on this invoice register, checking for the accuracy of the data that has been inputting.

From that point on, the computer draws checks to our vendors based on the due date that was assigned to each and every invoice.

Q And stuffs the envelopes and puts them in the mail?

A The checks are written on the computer. The checks come back to my group. There are certain attachments made where called for, and the checks are ordinarily machine inserted into envelopes and mailed out to the parties.

Q Now, in 1967, the booklet or invoice register you called it -- what is the expression you used to describe the booklet of the data that the computer printed out?

A That is referred to as the invoice register.

Q And did that book sit on the back of your desk for sometime in carrying out your duties in '67 and thereafter?

A The invoice register is available within the

department.

Q In 1968, did Union Carbide begin the practice of making microfilms of that book prior to its being sent to a document depository?

A Not of that record.

Q What --

A Other records.

Q What were microfilms made of?

A We have another record which we call our paid file. This, once again, is an IBM scroll, and it lists in detailed information, all items paid to our vendors for a given period of time. This file, beginning in 1968, was put on microfiche.

Q And I take it that a person looking at the microfiche could obtain a piece of paper which printed out the microfiche indicia if they wanted to?

A Yes. There is a unit available from which you can make a hard copy from the microfiche. What it does is blow up the film that is on the microfiche, which is nothing more than a piece of microfilm.

Q Let me show you Government's Exhibit 85 for identification. Will you examine that and tell the jury if you recognize that document and if you can identify it for us?

A This is a hard copy made from one of our microfiches of Union Carbide paid filed.

Q And can you tell the jury what time frame is represented by the payments in that document?

A This is for the year 1968.

Q I show you Government's Exhibit 86 for identification and ask you to tell the jury if you can identify that exhibit.

A Yes. This is a letter which I furnished to the IRS answering the information that they had requested.

Q In what year?

A This was written by me October 9, 1969.

Q Will you tell the jury, please, what source of information and record you employed in preparation of the second page of that exhibit?

A The second page of this record here was actually prepared from two sources.

1965, and 1966, the data wouldn't have been in my office, but in my records retention center, which is located in Morrisville, Vermont. The data for 1967 was on IBM scroll in my office at this period of time and would have been obtained from that scroll.

Q And do you in fact remember --

A Yes.

Q -- preparing that table from that scroll?

A Yes.

Q And would you tell us if the two records that you just described, the 1966 scroll from Vermont, and the booklet, where they are today?

A Neither record exists today, in line with Union Carbides records retention. They have been destroyed.

MR. MAC DONALD: We offer both exhibits at this time, your Honor.

MR.TIGUE: Government's Exhibit 85, your Honor, I have no objection to.

THE COURT: Received.

(Government's Exhibit 85 for identification, received in evidence.)

MR. TIGUE: I object to Government's Exhibit 86. It isn't a business record of the company. It seems to be a letter between Mr. Czajkowski between the IRS.

THE COURT: Do you dispute that Mr. Czajkowski prepared it from a record kept in the usual course of business?

MR. TIGUE: No, but the letter is a two-page exhibit between him and the IRS and attached is a tabulation and I certainly would object to his communication with the Internal Revenue Service.

I don't believe that's one of their normal business records. It was a document prepared for, I suppose, this very case.

MR. MAC DONALD: We don't press the offer of the first page.

It's the tabulation which is the subject of the offer.

MR. TIGUE: I have no objection to that, your Honor, it's the letter.

THE COURT: All right, page 2 is received.

MR. MAC DONALD: All right, your Honor.

xx (Government's Exhibit 86 for identification, receivedin evidence.)

THE COURT: Gentlemen, would you come up to the side bar for a minute.

(At the side bar.)

THE COURT: Mr. MacDonald, is it part of the Government's case to prove the statement that no payments were made by Carbide to Leonard during '65 to '68?

MR. MAC DONALD: Sir, I think the next "re" in the schedule shows payments to Leonard Process Co. It's immaterial how they were paid. We have the economics themselves.

THE COURT: Then you don't care about that?

MR. MACDONALD: No, sir.

(In open court.)

Q I would like to direct your attention, please, to the microfiche, Government's Exhibit 85 for identification, and, if you could, locate on there for the jury, please, the first entry for Leonard Process Co, and reading from left to right across the line of that exhibit, explain to the jury what those entries represent, from left to right.

A Okay.

The first entry, under "Leonard Process", 50-511. 50 is a two-digit code which represents a definition of the Union Carbide Corporation, in this case, the chemicals and plastics division of Union Carbide.

511 signifies a specific location within this country, in this case, South Charleston.

The next two digits you see are 1276. That represents the invoice transmittal number, the first two digits of which represents the accounting month in which Union Carbide recorded the item, and 76 represents the consecutive transmittal prepared within that accounting month.

The next column, you see a dollar amount here of $68,521.21. That represents the amount of an invoice that

was paid.

Next column you see E-10567, which represents the vendor's invoice number. The next column repeats the date, 0109, 8, being January 9, 1968, the date of our check.

The next column, you see 11-454638. That's Union Carbide's check number. And the last column, you see the total dollar volume of that check. In this case it's the same as the invoice, $68,521.21.

Q And the vendor's invoice number column that you referred to: Will you tell the jury from what document or documents that information is obtained from by the programmer in Carbide?

A This invoice number is filled in by our field location for each invoice where the vendors' invoice has such a number. If the vendor's invoice has no number on it, they try to fill in some other means of identification for the vendor. This is part of the information that goes out to the stub or, let's say, recipient's advice portion of our check to the vendor, so this will enable him to know what we are paying for.

Q I draw your attention please to the second tabulation, in Government's Exhibit 86 and would you tell us first what the first column of information on that tabu-

lation represents?

A Left or the right?

Q Left.

A On the left it's the invoice number.

Q And is that the same item of information, that is, the vendor's invoice number?

A Correct. The vendor's invoice number.

Q And that's obtained in the same fashion.

A That's obtained in the same fashion?

A That's absolutely correct.

MR. MAC DONALD: I would like the witness to examine and identify the following exhibits: 21, 25, 29, 31, 37, 38, 40, 42, 27 and 33.

Q Will you tell the jury, please, what those exhibits are?

A Yes, I can. These are hard copies produced from the microfilm files at our location in South Carhleston, West Virginia.

Q What kind of documents are they from?

A In this particular instance they happen to be copies of the invoices they processed.

Q For what time period?

A What time period?

A Each invoice is dated at sometime in 1968.

Q And at my request earlier this morning, did you compare the microfiche, Government's Exhibit 85, column of invoice numbers, with those in your lefthand, and do they represent the invoices which were encoded in that microfiche tabulation?

A That's correct.

Q Now, for 1967, what were the microfilming practices of the Charleston, West Virginia group with respect of invoices received there?

A The same as they were in 1968.

Q And where are those microfilms today of the invoices that were received in '67?

A The microfilms are no longer available. The field locations, once again, are guided by the Union Carbide record retention.

Q And they were destroyed in accordance with that guidance?

A That's correct.

MR. MAC DONALD: We offer the Exhibits which have been identified. I will show them to Mr. Tigue.

MR. TIGUE: No objection to any of those.

xx (Government's Exhibits 21, 25, 29, 31, 36, 38, 40, 42, 27, 33, received in evidence.)

Q Mr. Czajkowski, I have placed before you a group of exhibits which have been previously marked.

They are fairly numerous. I have the same question with respect to each exhibit and maybe we can make a single listing for the record concerning the numbers that appear on those exhibits.

Can you identify for the jury, and if so, do it by the number that is taged on there, each of those documents as being either the original check or copy thereof, of a Union Carbide payment to the Leonard Process Company.

A The first exhibit is Exhibit 4. This is a copy of a Union Carbide check issued to Leonard Process Company.

Exhibit 5, again, a copy issued to Leonard Process Co.

Exhibit 6, a copy of a Union Carbide check issued to Leonard Process.

Exhibit 7, the same thing.

Exhibit 8, also a copy of Union Carbide check to Leonard Process.

Exhibit 9, the same thing.

Exhibit 11, a copy of Union Carbide's check to Leonard Process.

Exhibit 12, the same thing.

Exhibit 13, the same thing.

Exhibit 14, the same thing.

Exhibit 15, the same thing.

Exhibit 16, the same.

Exhibit 17, same.

18, the same.

19, the same.

Exhibit 20 is Union Carbides original check issued to Leonard Process.

Q If I can interrupt for a moment and ask you about Exhibits 4 through 19, which you have just identified as copies of checks, will you tell the jury, if you delivered those copies to Agent Laski of the IRS in or about June of 1970?

A That's about correct.

Q And where are the originals today of the checks which are copied before you?

A The originals don't exist. They were destroyed in accordance with Union Carbide's records retention.

Q Will you continue going through the remainder of the checks and identify those, if you are able to, please.

A I believe I had indicated that Exhibit 20 is an original of a Union Carbide check issued to Leonard Process.

Exhibit 22 is the original Union Carbide check to Leonard Process.

Exhibit 23, original Union Carbide check to Leonard Process.

Exhibit 24, an original Union Carbide check to Leonard Process.

Exhibit 26, the original Union Carbide check to Leonard Process.

Exhibit 28, the original Union Carbide check to Leonard Process.

Exhibit 30, the original Union Carbide check to Leonard Process.

Exhibit 32, the original Union Carbide check to Leonard Process.

Exhibit 34, the original Union Carbide check to Leonard process.

Exhibit 35, the original Union Carbide check to Leonard Process.

Exhibit 37, the original Union Carbide check to Leonard Process.

Exhibit 39, the original Union Carbide check to Leonard Process.

Exhibit 41, the original Union Carbide check to Leonard Process.

Exhibit 43, also the original of Union Carbide check to Leonard Process.

MR. MAC DONALD: We offer each of those in evidence.

MR. TIGUE: I have no objection to any of those exhibits except 4, 5 and 6.

Those are 1966 checks and there is nothing in the indictment about 1966. We are talking about 1967 and 1968 checks.

THE COURT: Mr. MacDonald?

MR. MAC DONALD: Those are offered on the alternate basis, Judge, with respect to Mr. Leonard's statements concerning those instruments.

THE COURT: At this point, they will be received.

xx (Government's Exhibits 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 26, 28, 30, 32, 34, 35, 37, 39, 41, and 43 for identification, received in evidence.)

MR. MAC DONALD: Your Honor, next we offer Government's Exhibits 68 through 73, being documents produced by the Leonard Process Co. Inc., pursuant to this Court's order and subpoena.

I show them to Mr. Tigue.

MR. TIGUE: No objection, your Honor, to 68 through 73.

THE COURT: They will be received.

xx (Government's Exhibit's 68 through 73 for identification, received in evidence.)

Q Mr. Czajkowski, will you examine Government's Exhibits 68 through 73, the yellow carbon copies of invoices and ascertain if they appear on the microfiche as having been received by Union Carbide?

Do it one at a time, please -- received by Union Carbide and a payment made in accordance with its terms.

You are looking at 68 first?

A That's correct. The item Exhibit 68 is not on the list.

Q Will you compare 68 with the microfilm from South Charleston, Exhibits 21 through 42 and see if you can locate an invoice which corresponds with 68 as having been microfilmed at South Charleston back in 1968?

A This item is not here either.

Q Would you direct yourself to the next --

MR. MAC DONALD: Withdrawn.

Q Let me ask you this. Is it a fact, then, that Union Carbide did not receive an original of such an invoice? Tell us if in fact Union Carbide received the original of such an invoice and made any payment pursuant thereto, of the one that's in your hand, 68.

A Union Carbide didn't pay this invoice.

Q Will you direct your attention to the next exhibit, please, 69 in evidence.

A Exhibit 69 is not on the microfiche, also.

Q Have you previously searched for a photostat of the original of what 69 is a carbon in the microfilm of the South Charleston invoices and have been unable to find such an original?

A That is correct.

Q Will you direct your attention, please, to the next exhibit, 70 in evidence.

A The next exhibit is Exhibit 70. Exhibit 70 is not on the microfiche.

Q Or in the group of Exhibits 21 through 42, the microfilm printouts from South Charleston.

A That is correct.

Q Finally, how about Exhibit 71 for identification?

A Exhibit 71 is not on the microfiche.

Q Will you look at the printout and see if you can locate an original of that carbon copy.

A Exhibit 71 is not here either.

Q How about Government's Exhibit 72 in evidence?

A Exhibit 72 is here on the microfiche.

Q On what date was the original of that received, at least as so indicated on the microfiche?

A The date of the payment?

Q Or the month.

Withdrawn.

What month is programmed into the column on the microfiche indicating the month of processing in the field?

A April.

Q What is the date of the invoicing?

A April 1, 1968.

Q Have you been able to locate the corresponding microfilm of the original of that invoice? Will you do so, please?

A Government Exhibit 27 is the is the microfilm copy from South Charleston.

Q Would you look at Government's Exhibit 73 for identification, the last yellow carbon copy of an invoice.

A It's here on the microfiche.

Q Would you tell us what the corresponding microfilm of the original of that invoice is?

A Exhibit 33 is the same 73.

Q What date was that processed and paid by Union Carbide -- was the original of that processed and paid by Union Carbide?

A It was processed in the month of June, and it was paid on June 19, 1968.

Q Each of those last two invoices, 27 and 33, are in the amount of $37,000, are they not?

A That is correct.

Q I would like you to address yourself to the tabulation which you prepared and which has been identified as Government's Exhibit 86 for identification. Will you locate that?

A OK.

Q I would like you to, working backwards in time, tell the jury, with respect to the latest $37,000 payment for 1967, on what date Union Carbide rendered the payment, and what vendor's invoice number was with respect to that $37,000 payment.

A OK. On December 20, 1967, invoice No. 910567, amount $37,000.

Q What was the next $37,000 payment to that?

A The next $37,000 payment was on November 16, 1967, vendor's invoice No. 810567, $37,000.

Q And before that?

A The one before that was paid on 10/25/67, Invoice No. 710567, $37,000.

Q And the one before that?

A It was paid October 5, 1967, Invoice No. 610567, for $37,000.

Q Would you look at the Exhibits 68, 69, 70, and 71 and tell the jury if any of those numbers correspond to any

of those four payments which you just described, that is, the vendor's invoice number.

A Exhibit 68 does not. Exhibit 69 does not. Exhibit 70 does not. And Exhibit 71 does not.

Q Mr. Czanjkowski, will you tell the jury what additional document attached to the check or enclosed with the check is sent together with the check to a vendor receiving payment from Union Carbide?

A There is either a stub or a remittance advice, whichever you prefer to call it, and it identifies each invoice being paid within that check for a vendor. A Union Carbide check can cover the payment of one invoice or on up the line, any number. There is no limit to the number of invoices that can be paid in one check. Detail must be provided, however.

MR. MacDONALD: I have nothing further, your Honor.

MR. TIGUE: May I have just a minute, your Honor, to get my papers together?

THE COURT: You may.

(Pause)

CROSS-EXAMINATION

BY MR. TIGUE:

Q Mr. Czanjkowski, my name is John Tigue; I

represent Mr. Leonard here.

A How do you do.

Q Let me see if I understand you correctly. You have identified some checks for 1966 and 1967, is that correct, copies of checks?

A That is correct.

Q The originals of those checks have been destroyed?

A That is correct.

Q And that is in the ordinary course of your destruction policy.

A That is correct.

Q Along with those, for good or for bad, are the invoices which relate to those checks, those are also destroyed, are they not?

A That is correct.

Q And there are nowhere in the world microfilm copies of those?

A That is correct.

Q Or no cpies of any kind in Union Carbide's records; is that right?

A That is correct.

Q Is the same true with respect to the receiving reports?

A That is correct.

Q And the invoices, the Leonard Process Company invoices which you have identified, for instance, Government's Exhibit 21, do you have those before you, sir? I know that there are quite a few there.

A Yes, I have Exhibit 21 in front of me.

Q And you have compared those microfilm copies to, let me see, the microfiche?

A That is correct.

Q Is that correct?

A Correct.

Q And the information contained on those invoices is contained in the microfiche, is that correct?

A That is correct.

Q Do you notice in the microfiche, sir, that there is a different -- take a look at the microfiche for a minute, please.

A Surely.

Q And ;take a look at just any one. On the microfiche, I guess it is Exhibit 85, I am referring to the column which is called the vendor's invoice. Is it vendor?

A Vendor's invoice number.

Q Right. That is on your list here. And I notice when the keypunch operator puts the number in there, they leave out, do they not, the dashes between the invoice number

itself, is that right?

A That's possible.

Q If you look at the Leonard Process Company --

A In this case it is true.

Q Right. And the invoice numbers are really written by the local Union Carbide people, who put it on the request for payment and the keypunch operator puts it in the card, I guess; is that right?

A That is correct.

Q Now, if you notice from the microfiche, that there are payments made to the Leonard Process Company which are in even amounts; right?

A That is correct.

Q Like $37,000?

A That is correct.

Q And there are other payments which are in assorted amount, like $68,512.21?

A That is correct.

Q I gather, Mr. Czanjkowski, you have no personal knowledge of any of the backup for any of these documents, is that right?

A That is absolutely correct.

Q And I notice, for instance, on one of the invoices I have 21 before me, it says, I think, "Approved subject to" something "audit." Can you read yours?

A Yes. I believe it says "approved subject to detailed audit", and it's signed, looks like Shaver or Shawver.

Q It should be Shawver, S-h-a-w-v-e-r. Do you know Mr. Shawver?

A Not personally, not, I don't.

Q And is he the person at Union Carbide who would have the specific personal knowledge as to the manner in which these invoices were actually processed?

A That I do not know for a fact either.

Q Well, you have testified to the procedure here. Can you describe the procedure?

A I would say, based on what I see here, he had the approval to pass this on for further detailed audit, this document.

Q What happens to the check after it is issued? Is that issued at New York?

A In the time period we are talking about, sir?

Q '66, '67, '68, yes.

Q In that time period was issued out of 270 Park Avenue.

Q Then were the checks mailed out to the vendors or were they ever mailed to the units who were engaged with the vendor himself?

A Checks are then mailed to the vendors.

Q Would there ever be situations where an invoice had been approved and then there was a hold on the payment for whatever reason?

A It could happen.

Q And you don't have any personal knowledge in this case whether it did or not happen?

A I did not.

Q I misspoke. You did not have any personal knowledge whether it did happen or it did not happen, is that correct?

A That's correct. I do not have any personal knowledge.

Q And I think when you saw me stand up before -- lawyers object sometimes -- were you testifying from your personal knowledge as to what happened to these very checks when you testified, or were you testifying from what the procedure is normally at Union Carbide?

A Normal Union Carbide procedure, as I know it from my own experience.

Q Right. And if there was any deviation from it, you would not necessarily know that, is that correct?

A Possibly.

Q I don't understand that. I mean -- I withdraw

that.

Now, when was it for the first time that the invoices for 1967 were asked of you?

Let me withdraw that. Were any payments made to Jackson Leonard personally by Union Carbide during the years in question, I guess we are now talking about '66 as well as '67, '68.

A Not that I am aware of.

Q Were any checks issued to anyone other than the Leonard Process Co. according to your records?

A Would you clarify by -- would you clarify that question for me, please?

Q Well, I notice the invoice says the Leonard Process Co.

A Right.

Q Were any payments made to the J. D. Leonard Associates?

A Not according to my records.

Q According to the records, you have only payments were made to the process company, is that right?

A That's correct.

Q And in connection with generating those payments, there is in the normal course of your business, produced a received report, correct?

A A receiving report at the field location.

Q And an invoice has to be submitted by the vendor?

A That's normal.

Q And then, of course, checks or copies of them are maintained by Union Carbide?

A That's correct.

Q And I think the prosecutor asked you about some stubs or remittance which was sent. Are any copies of that document maintained by Union Carbide?

A Union Carbide's check is a one-part form. Union Carbide's official record is this paid file, as Exhibit 85, which is computer produced.

Q In addition to the cancelled checks themselves, is that right?

A That's correct.

Q The cancelled checks always come back from the bank?

A That's correct. But we have no copy of the stub or, let's say, remittance advice portion of the check.

MR. TIGUE: Your Honor, may I pass some of these to the jury while I just finish.

THE COURT: You may.

(Exhibits handed to the jury.)

Q Mr. Czajkowski, I am going to pause for the jury to look at those, but while they are looking at those, would you please look at Government's Exhibit 85 and 86, and take a careful look, please, at the invoice numbers which are shown on 86 and the invoice numbers which are shown on 85, which relates to 1968, 86 relates to '67, and prior years.

THE COURT: Those of you in the jury who have these exhibits, when you finish, why don't you pass them individually along rather than holding them all, and they will get to everybody perhaps a little faster.

Q Have you had a chance to take a look at those two numbering systems for the two invoices, Mr. Czajkowski?

A Yes.

Q Now, you notice in 1967, referring to Government's Exhibit 86, thre are various invoices which have the same number but for different amounts, is that correct?

A That's what the listing shows, that's correct.

Q For instance, if you look at the bottom, there is Exhibit Number 70, 10567, and then if you look up at the top you see an invoice number for an even amount, is that correct?

A That's correct.

Q Now, when you look at 1968, the following year, you see on your microfiche, do you knot, that the invoice numbers for the even amounts change with respect to the what I would call suffix year, the last two digits, is that right?

A That's correct.

Q Pardon?

A That's correct.

Q But that the numbering system remains the same for the odd amounts, to differentiate them, is that right?

A Well, I don't know if that's the reason for it.

Q But they are different?

A They are different, that's correct.

Q So starting in 1968, all the even payments have a -68 after them, is that right?

A They have a 68 after them.

Q But all the odd number payments remain -67, is that correct?

A That's correct.

Q And the same is true of the invoices themselves, is that right?

Well, that's what you have on there, you are just reading from the microfiche, is that right?

A That's right.

Q Now, also you said that Government's Exhibit 72 and '73 are on your microfiche, is that right?

A That's right.

Q And the numbers of those respectively are 15-10568 and 16-10548, is that right?

A That's correct.

Q And then, if you look at the earlier invoices, the yellow ones, 68-271, you see do you not, that they are all numbered in sequence, is that right, Mr. Czajkowski?

When I say in sequence, if you look at the first two numbers, that may help you?

A That statement is correct.

Q Now, if I may show you Government's Exhibit 4 -- I will give you my copy -- could you tell us the date of that check, sir?

A The date of this check here?

Q Yes, please.

A According to this copy, 5-17-66.

Q That would be May of 1966.

A That's correct.

Q And those checks themselves don't have the invoice number of them, is that right?

A That's correct.

Q May I have that.

Now, can you tell us when it was that the Internal Revenue Service came to you for the first time and asked you for copies of these 1966 checks, including the May of '66 and the ones that follow that?

A 1966 checks?

Q Yes. Let's start with '66. You gave them all the checks at one time, didn't you, or copies?

A No, that is not correct.

Q Will you tell us how you got them, which ones you gave at which time?

A In some period in 1970, the Government asked for cancelled checks to support that listing that's a Government

Exhibit there.

Q Now, the invoice that the Leonard Process Co. invoice, which support these payments, when was the first time that anybody from the United States Government, including the Internal Revenue Service, asked you for those.

A About the same time.

Q When was that.

A About 1970.

Q And at that time did you give them it --

A Excuse me. Let me correct that statement.

In 1970, we gave them copies of certain cancelled checks.

Q Right.

A In 1972 we furnished them copies of certain invoices.

Q That was what? In November or October of 19--

A I don't recall the date.

Q In any event, it was some six years since the first invoice was issued to support the first check, is that right?

A I don't know what the first invoice was.

Q Well, Government's Exhibit 4 is dated May of 1966, is that right? That's the first one that you had.

I believe this one is dated May 17, 1966.

A This one is dated --

Q Right. And the first time the Internal Revenue Service came to you and said, "What's the invoice for that" it was in 1972, is that right?

A That's right.

Q And by that time the documents had been destroyed is that right?

A Yes.

MR. TIGUE: Thank you, sir.

xx REDIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Tigue, referred to the possibility that a check once printed by the computer might be subject to someone in authority saying "hold that check" or "hold" as he put it.

Will you tell the jury what practices and procedures were at Carbide in respect of such checks issued by the computer but not to be sent?

A Under Union Carbide's procedure, a check once issued, is either mailed or voided. It's not retained in the accounts payable department, once having been issued.

Q Is there someone whose job it is to void checks on the date of issuance?

A That is a group in my department and before the

next check cycle can be prepared by the computer, the voids have to be processed.

xx RECROSS EXAMINATION

BY MR. TIGUE:

Q Again, Mr. Czajkowski you are talking about procedure.

You have no independent recollection or knowledge of what happened to these very checks, do you?

A Not personally, no.

MR. TIGUE: No further questions.

MR. MAC DONALD: I forgot to ask your Honor something at the side bar.

(At the side bar.)

MR. MAC DONALD: Judge, between the time this morning when I exercised 3456A and put it in your Honor's folder and Mr. Czajkowski's arrival in my office, I prepared a three-page set of notes from which I would ask him the questions that I put to him today, which I guess I should submit to the Court as 3506A as an additional packet.

It was made, I represent, in the same circumstances that I make such notes, that is, I note a keyword here and there to remind me to ask the witness a question or put down an exhibit number or two to be sure I don't forget an exhibit.

It was made simultaneously to my talking to Mr. Czajkowski -- and Mr. Tigue was invited to attend this morning at 8:30, but he had more pressing business -- and it wasn't intended to be a substantial verbatim transcript of Mr. Czajkowski's words.

THE COURT: Mr. Tigue, you aren't interested in these?

MR. TIGUE: I am interested in every piece of paper. So far I have got nothing for any witness that we have.

THE COURT: You have had 3500 material.

MR. MAC DONALD: I think there was a 1972 letter.

MR. TIGUE: But that's in evidence.

MR. MAC DONALD: There also is a 3506 which is a 1972 letter. This one. (Handing).

MR.TIGUE: Yes. I have this one, your Honor, 3506.

THE COURT: All right. I see. What do we do with this?

MR. MAC DONALD: 3506A will be a sealed exhibit.

THE COURT: I will mark this 3506A-1.

xx (Government's Exhibit 3506A-1, consisting of three sheets, marked for identification.)

MR. TIGUE: I hand to your Honor, 3506, which

I have, but I would like -- well, I guess it's not important enough, but I found out about the meeting after it took place. I don't think it's important. It doesn't make any difference with respect to the issues.

MR. MAC DONALD: We had an appointment. You asked Mr. Marshall, Mr. Czajkowski's lawyer, if you could meet at 8:30 in the morning.

MR. TIGUE: The arrangement was that I would do that at yesterday's lunch hour, and that's the last I recall.

THE COURT: All right. I have put these exhibits in the folder.

(In open court.)

THE COURT: Are you through with Mr. Czajkowski?

MR. MAC DONALD: Yes, your Honor.

THE COURT: All right, Mr. Czajkowski, you are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, we will take our mid-afternoon recess.

(Recess.)

MR. MAC DONALD: Government calls Mortimer Laski to the stand.

MO R T I M E R L A S K I, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Laski, will you tell the jury, please, your current occupation?

A Currently, I am an instructor at the Regional Training Center in Los Angeles, California.

Q How long have you been stationed in California?

A About five years now.

Q Is that an instructor with the IRS?

A Yes, it is.

Q Prior to that assignment, where were you stationed and what was your job assignment?

A I was stationed in New York, 120 Church Street, and I was an Internal Revenue agent.

Q And what function --

MR. MACDONALD: Withdrawn.

Q How long had you been an Internal Revenue agent or auditor here in New York at 120 Church Street prior to your transfer?

A About five years.

Q Would you tell the jury, please, your educational

training and experience prior to becoming an auditor of the IRS.

A Well, I went to college, where I majored in accountancy and I became a Certified Public Accountant. I went to law school in the evening and I became a member of the New York Bar.

Q Will you tell us when you graduated from accounting school and when you graduated from law school?

A I graduated from college in 1961 and I graduated from law school in 1969.

Q Prior to your employment with the Internal Revenue Service, did you practice accountancy here in New York City?

A Yes, I did. I practiced accountancy for about four and a half years.

Q I would like to draw your attention to 1968 and ask you if in the fall of that year you were assigned the returns of Jackson Leonard for that conducting an audit of those returns?

A Yes, I was.

Q And did you have some initial communications with an attorney and an accountant in respect of Mr. Leonard and his returns?

A Well, initially, as in every other case, I

contacted the representative. In this case, it was attorney Mr. Lefkowitz. Mr. Lefkowitz requested that I contact --

MR. TIGUE: I object to the conversation with Mr. Lefkowitz.

MR. MAC DONALD: The Court can take it subject to connection.

THE COURT: No, I think on this record I will sustain that objection. You had a conversation with a Mr. Lefkowitz?

THE WITNESS: Yes, I did.

THE COURT: After that, what happened?

THE WITNESS: I contacted Mr. Lescowitz, the accountant.

Q Did you begin working with Mr. Edward Leskowitz, an accountant, at his offices, in auditing the tax returns of Mr. Leonard?

A Yes; I did.

Q And will you tell the jury, please, if the audit was conducted always at those offices until some later point, when you met Mr. Leonard for the first time?

A The audit was contucted at Mr. Leskowitz's office at midtown Manhattan, outside of work work and research on tax matters that I did in my own office, until the day that I had a meeting with Mr. Leonard.

Q And in the course of that audit, did you request certain documents in respect to the matters that you were looking at?

A Yes. I requested many documents, one of which were the contracts -- one of which is the Union Carbide contract, which is the issue in this case.

Q I show you what has previously been marked Government's Exhibit 76 for identification and ask you to tell the jury whether you have seen that exhibit or an identical copy of it at some previous time.

MR. TIGUE: What is that exhibit number? I didn't hear what exhibit number it was.

THE WITNESS: Exhibit 76.

A These are the bank statements from First National City Bank. I worked with the original bank statements, and these are a copy of those. I'm familiar with these.

Q In addition, I would like to show you Government's Exhibit 77 for identification and ask you, please, to examine these two pages and tell the jury if you can identify those documents.

A These are the work papers of Mr. Leskowitz. It's an analysis of the receipts of Mr. Leonard for 1967, and it is a recapitulation of the expenses for Mr. Leonard for 1967. I can identify them.

MR. MacDONALD: We offer both Government's Exhibits 76 and 77 for identification.

MR. TIGUE: May I ask him some questions?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q On Exhibit 66, Mr. Laski, where did you get that for the first time?

A 66?

Q 76. I am sorry. The First National City Bank --

THE COURT: Is that being offered?

MR. MacDONALD: Your Honor is correct. There are two schedules. We limit the offer to whichever Mr. Tigue

wants to deal with first. 75 are the bank statements, which we do offer.

THE COURT: All right. Go ahead.

Q Where did you see that for the first time?

A Well, these are the bank statements from First National City. I received those from Mr. Leskowitz.

Q You didn't get the bank statements from Mr. Leonard, did you?

A No. From Mr. Leskowitz. That was his --

Q I am sorry.

A That was his agent.

THE COURT: All right.

(To the witness:) Mr. Laski, just answer the quest-ons specifically that you are asked. The answer is no.

Q Government's Exhibit 77: that is the work paper which Mr. Leskowitz gave you?

A If you let me see it.

Q You didn't get that from Mr. Leonard, did you?

A No.

MR. TIGUE: I object to both of those, 76 and 77, as not in any way binding on my client.

THE COURT: At this point, I will take them subject to connection. Overruled.

The exhibits are received.

(Government's Exhibits 76 and 77 for identification were received in evidence.)

BY MR. MacDONALD:

Q You referred a moment ago to having requested contracts in the course of your conduct of this audit.

A That's right.

Q And did you receive the document from Mr. Leskowitz which purported to be a contract with the Union Carbide Corporation?

A Yes; I did.

Q And will you tell the jury what you recall today with respect to the contents of that -- What happened to that document after you completed your work in the course of the audit?

MR. TIGUE: I object to that. It is irrelevant what he did with respect to that.

THE COURT: He is laying a foundation. Overruled.

Go ahead.

A This is one of many contracts I received. The Union Carbide contract was somewhat different in the respect that there were cross-outs in the contract that were initialed. There were paragraphs in the contract which I was later told were abrogated and changed.

MR. TIGUE: Objection.

THE COURT: Yes. I sustain the objection.

(To the witness:) You are going 'way beyond the question. The question is, you saw a contract, and what did you do with it?

I thought you were laying a foundation for secondary evidence.

Q Physically when you were given the document, was it a large, bulky document?

A Yes; it was twelve or fifteen pages long. I read the contract and excerpted the parts that I needed for my examination.

Q Did you write down the excerpts that you just referred to?

A Yes; I put them in my work papers, verbatim.

Q With respect to your completion of the process of excerpting, what did you do with it?

A I gave it back to Mr. Leskowitz.

Q With respect to the alterations which -- Tell us what you recall concerning the alterations which appeared on that document which you inspected.

MR. TIGUE: I object, your Honor. He is talking about a document that is either in evidence or it isn't. Now, there are contracts in evidence which I wish he would refer to. Otherwise, he is going to refer to a document which

is not in evidence.

THE COURT: If the witness can identify any exhibit as being the exhibit that he saw on that date, that is one thing. If he cannot, then it's another thing.

MR. MacDONALD: I will be guided by your Honor's ruling.

Q I place before you, Mr. Laski, Government's Exhibits 3, 66 and 67 in evidence and ask you, please, to examine each of those exhibits and tell the jury if you can identify any one or more of those as being the exhibit which you described to the jury as having been presented to you in the 1968 conference.

A I believe it's Exhibit 66.

Q Will you tell the jury your best recollection with respect to that identification. What is the basis for your belief, as you say?

A When I had reviewed these contracts, it was in connection with matching up the contracts with actual deposits that were made. The first clause that I had been concerned with was a clause that called for continual payments of $37,000 a month for ten months, I believe it was. The analysis of my deposits was short. I think there were three or four payments made, and the next few months didn't have these $37,000 deposits, and I noticed that the contract itself had

not been changed; that clause was left alone.

I then turned to the -- to another clause -- I think it was Clause E -- which called for a ten per cent override to be returned to Mr. Leonard. This override had been crossed out, but there were no initials against it. I suppose I was a bit more interested in contracts --

MR. TIGUE: I object to that.

THE COURT: Yes. Strike that out.

THE WITNESS: What?

THE COURT: Mr. Laski, we are going into what it is now that enables you to say that you believe it to be 66, that is, the document you saw at that time. It is really a question of what are the earmarks of what you saw in 66 based on your recollection of what you saw.

THE WITNESS: The crossing out of Clause 3(e), I believe it is. Yes; it's the crossing out of 3(e).

Q I would like you to look at the crossing out on that exhibit. Read the words underneath the crossing out for the purpose of refreshing your recollection concerning what it was you saw back in 1968 and '69, and then I would like you to close the exhibit up after you have looked at it for that purpose.

A Read the words under the crossed-out lines?

Q Yes.

A I am afraid I can't do that.

Q I would like to show you Government's Exhibit 89 for identification and ask you to tell the jury, without reading the contents, simply what that document is and who authored it.

A This is a schedule I prepared during the audit which has notes about this particular contract.

Q And would you tell us if the last entry on that page, the bottom, relates to Paragraph 3(e).

A Directly.

Q And would you read the exhibit before you and that last entry to yourself and tell us if it refreshes your recollection concerning the words which you observed in the original document which was presented to you, which had been altered.

A It refreshes my recollection.

Q Are you able to tell us without reading either it or the contract before you, what those words are?

A Not verbatim.

MR. MacDONALD: We offer the work paper, Government Exhibit 89 for identification.

MR. TIGUE: Is the offer related to the words crossed out below?

THE COURT: I assume so.

MR. MacDONALD: Your Honor --

MR. TIGUE: May I ask a question of the witness?

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q May I see what you have before you.

Government's Exhibit 89 for identification: are those the handwritten notes you made when you looked at the contract?

A Yes; they are.

Q Is that the same contract you have before you, which is Government Exhibit 66?

A Yes; it is.

MR. TIGUE: All right. I have no objection to that, your Honor.

THE COURT: It will be received.

(Government Exhibit 89 for identification was received in evidence.)

THE COURT: Mr. MacDonald, do you want to read from that exhibit to the jury?

MR. MacDONALD: Yes, your Honor.

(Mr. MacDonald read to the jury from Government Exhibit 89.)

BY MR. MacDONALD:

Q Did there come a time thereafter, Mr. Laski, when

you met with Mr. Leonard face to face?

A Yes; there was.

Q Will you tell the jury where that meeting took place and who in addition to yourself and Mr. Leonard attended it.

A It was -- it took place at Mr. Leonard's office, and Mr. Leskowitz was present.

Q Will you tell us, to your best recollection, that conversation, what you said to him and what he said in response.

MR. TIGUE: May we also have the date as well?

THE COURT: Yes. Please fix the date.

Q What is your recollection as to the date, your best recollection, as well?

A I believe it was on or about March 1969.

Q What is your best recollection of that conversation as it occurred?

A Well, the conversation: I had asked Mr. Leonard directly, "Do you have any foreign bank accounts?" -- to which he responded, "No."

MR. TIGUE: Excuse me, your Honor. I object to this line of questions, as I previously objected. I don't want to keep bobbing up and down. May I have a continuing objection?

THE COURT: You may.

Q What was his response?

A His response --

Q What was Mr. Leonard's response to the question that you put to him on that subject?

A "No; I don't."

Q What happened next?

A I asked him a second time, "Do you have any foreign bank accounts?"

At this point, he said, "I don't have any foreign bank accounts except for the business that I am doing in Australia with LaPorte". I believe it was LaPorte.

I asked him once again, "Do you have any other foreign bank accounts?" -- to which he said, "No."

I then referred to the contract, and I asked him, noticing that there are other clauses in this contract crossed out and initialed about the $37,000 a month payments that were not coming in, and he said that he changed the contract.

I asked him about Section 3(e), about the override, where there was a crossing out but no initials, and he said the contract was changed once again.

I asked him why the paragraphs in the back were changed with initials, one paragraph, which is Section 3, about the override was changed without initials, while the

paragraph about the $37,000 a month payments was not crossed out or initialed at all, and I didn't receive much of a response on that, if any.

I asked him about a $28,000 payment to a Catalytic Company in Canada, I believe.

MR. TIGUE: I object to this, your Honor. It is wholly irrelevant to the charges in this indictment. It predates everything that is alleged in the indictment.

Your Honor, I might make my offer at the side bar, if you wish.

(At the side bar:)

MR. TIGUE: Your Honor, the answer is which is going to be elicited in this line of questioning is that this $28,000 was a payment made in 1965 or 1966, and it was made in cash to some company in Canada, I believe. I think that is prejudicial and is probative of nothing in this case, your Honor. I think there has to be an end to the things the Government can wave in front of the jury.

I don't think that proves anything. It is just a zinger of a kind which is going to be put in and has nothing to do with the charges in this case.

MR. MacDONALD: Mr. Tigue isn't correct as to the date. The date is in 1967, and payment was made in 1967. The agent will testify that while the expense ledger shows the

fact of payment, he wasn't able to find any check in such an amount.

He asked Mr. Leonard about the absence of the check, and the response was, "The payment was made in cash."

Now, our offer is for the purpose of privng that Mr. Leonard used large amounts of cash in the conduct of his business, $28,000, and that is a fact which goes to wilfulness. The central issue is sharpened by the openings in this case, and the use of cash in the conduct of one's ordinary business transactions is a fact from which the jury might properly consider in inferring whether or not there was an evasion or whether there was a mistake oran absence of --

THE COURT: And this transaction took place within the taxable year of the first count?

MR. MacDONALD: I will have to check, if I may, your Honor.

MR. TIGUE: In any case, your Honor, I don't believe that the use of cash is proof of anything, especially if there are receipts given or if it is made in the ordinary course of business in Canada.

I don't think it is probative of the charges in this case. I mean, anything that is one one hundred per cent documented by every check the Government can prove to the jury is an element of wilfulness? I object. I don't think it

proves a darned thing, and even if it does prove anything, it is certainly outweighed by the prejudice that is going to be put in the minds of the jury. He is going to put in a third of a million dollars in checks.

I think there has to be a limit on what the Government can do.

MR. MacDONALD: This does not delineate whether it is in '66 or in '67, which was a joint report for both of those years.

I tell your Honor, in addition, of the three checks which came in the first three exhibits, the '66 Carbide checks, one thousand, ten thousand and one thousand, two of those checks were also cashed, and it is the Government's intention to show -- it is the Government's hope to prove with respect to the four items of proof, 28,000, 10,000, 1,000 and 1,000, if we assume it is '66 for the moment, the use of cash in such total sums may be a factor in the jury's consideration of wilfulness.

We are not going to refer to the cash that might have been locked up at one point or another in this case.

THE COURT: All right.

(In open court:)

pm

Q Would you continue with respect to the last item of your answer.

A Having done a complete analysis of the bank account, I couldn't find any checks or where this disbursement would have come from. And the best answer I could receive to that was that it was made in cash.

The last thing we discussed was a rather technical topic. It was on stock that Mr. Leonard had received for work he had done for a company in Canada, which we would have tried to hold as income, and Mr. Leonard had explained that for the law of Canada and what have you, he was required to take the stock or the cash and then purchase the stock in the company. I believe that was the total conversation we had.

Q Approximately how long did the conversation last?

A About forty minutes.

Q Thereafter did you have occasion to request of Mr. Leskowicz an affidavit in regard to the foreign bank transactions?

A Yes, I did.

Q I show you Exhibit 74 for identification and ask you if you can identify this exhibit.

A Yes. This is an affidavit that we took in connection with foreign bank accounts.

Q You didn't see Mr. Leonard sign that affidavit, did you?

A No, I didn't.

Q Would you tell the jury how it came into your possession?

A I had requested Mr. Leskowicz to obtain this affidavit for me, and Mr. Leskowicz had done so, and either hand-delivered or mailed it down to my office.

MR. MacDONALD: We offer Government 74 for identification.

MR. TIGUE: I object, your Honor, to the conversation with Mr. Leskowicz, and I move to strike it. I don't believe there has been a sufficient foundation laid for that document. If I can, I would like to ask a few questions on voir dire.

THE COURT: Let me see the document.

THE COURT: Gentlemen, would you come up, please.

(At the bench)

THE COURT: At this point we have, I assume, in evidence, through the tax returns, Jackson D. Leonard's signature.

MR. MacDONALD: On numerous exhibits.

THE COURT: Well, on numerous of these checks, and as I recall my law, the jury may make its own comparison

as to whether or not this is his signature.

MR. TIGUE: I don't agree with thatm your Honor.

MR. MacDONALD: I think there is a statute to that effect.

THE COURT: I have forgotten.

MR. TIGUE: I would like to hear about it. I don't know of any such statute.

THE COURT: No, I think the jury, once there is an acknowledged genuine signature in evidence, may make its own finding as to the genuineness of any other signature available to it. I may be wrong in that. In any event, what is your objection to this?

MR. TIGUE: My objection is that there is no foundation laid. He goes to his accountant and says, "I would like an affidavit," and the accountant comes back and gives him this.

THE COURT: But are you going to contend --

MR. TIGUE: The accountant could have signed that. I don't know who signed that.

THE COURT: Do you contend that this is not Mr. Leonard's signature?

MR. TIGUE: I am putting the government to proof on that, your Honor. I am not consenting to that, that it is his signature. What they are attempting to do here,

your Honor, is to avoid calling Mr. Leskowicz. I object to it on the ground they can maybe take it subject to connection, Mr. Leskowicz can say of Mr. Leonard, "I asked him for this, he gave it to me, he signed it." But there is now no foundation. Even if there is a signature, the jury has the right, as your Honor says, to make the comparison, and I don't agree with that, but the foundation needs to be laid to show that the writing was on there, and I don't think they can do it of this witness. It is unfair to put it in through a witness who talks to a third party.

There is no power of attorney that I know of, and even if there was, there is no authority to make these kinds of admissions or concessions by Mr. Leonard. I do object to that, your Honor. I think that it is a perfectly valid, proper objection, and I don't believe the government has laid the foundation for this piece of paper. There is a proper way of doing it, and I think they ought to be compelled to do it.

MR. MacDONALD: I think I can put my hands on the statute.

THE COURT: Can I look at that if you have it? I would like to see it.

MR. MacDONALD: 1731. Title 28, Section 1731.

THE COURT: That seems to confirm my original

recollection as to the law.

MR. MacDONALD: I am sure there are cases holding that applicable.

MR. TIGUE: That was my point, your Honor: that even if an expert can come in and say that that was his signature, the foundation needs to be laid that this was given by the defendant or that all of this writing on here and the notary -- you can get a signed piece of paper with "John Tigue" on it, it can be a blank piece of paper, and someone can fill in the top, and before the government can put it in evidence the foundation has to be laid to authenticate the document, not the signature.

THE COURT: That somebody saw him actually sign it? And that they saw that that typing was above it?

MR. TIGUE: They have to authenticate the document. I think that somebody has to say, "This is a document that was given to me by Mr. Leonard" or "I saw him sign it" or there has to be a foundation, even if that is his signature on it. They can't just walk in with a piece of paper and a man's signature on it. I object.

MR. MacDONALD: I think that goes to weight, and Mr. Tigue is permitted to argue that Mr. Leonard might have signed a blank affidavit or might have signed a document that differed.

MR. TIGUE: What goes to weight, your Honor, is whether or not it is his signature. He can't make an argument on weight with respect to whether it was on there or wasn't on there. The government should have been prepared to lay the proper foundation for this document. They knew this was going to be a major area of dispute. I strongly dispute it. I think it is one of the most important pieces of offered evidence in this case, and I think that the government has not laid the foundation. They talked to his accountant. Why is that binding on my client? I don't see it, your Honor.

THE COURT: He comes back with a piece of paper which we can assume for present purposes is in fact signed by your client.

MR. TIGUE: If you want to assume that for purposes of the argument, your Honor. But they have to authenticate it. They just can't come in with a piece of paper, even if the man's signature is on it. That does not make it admissible. That does not make it an admission.

THE COURT: On this record I only have one open question.

(In open court)

THE COURT: Mr. Laski, when you had this conversation in March 1969, with Mr. Leonard, was anything

said about the meetings that you were having with accountant Leskowicz?

A He was with us, sir.

THE COURT: He was with you at that time.

THE WITNESS: Yes.

(At the bench)

THE COURT: Then I will admit this in evidence.

MR. TIGUE: But that wasn't asked for at that meeting.

THE COURT: But here is a Mr. Leskowicz who is representing him at the Internal Revenue Service, who is meeting with him, without him present, and is asked to obtain a statement from him. He comes back with an affidavit signed by Mr. Leonard. The jury could certainly so find, in response to an inquiry. I will therefore admit it in evidence.

MR. TIGUE: Your Honor, he is not agent with authority to make admissions upon him. The government might have some argument that there was a power of attorney. I don't believe he had one at the time.

THE COURT: I will admit it at this point. If you can find some authority to show me that it should not be in, I will be delighted to strike it out. But it seems to me perfectly clear that if a man's agent and the principal in this case was working with him and letting him front for

him with the IRS, the man's agent is asked, "Would you go get from your client an affidavit to this effect, he comes back with the client's signed affidavit which the man has signed, it seems to me that that affidavit becomes admissible.

MR. TIGUE: I don't think that is a sufficient foundation, your Honor, and certainly in addition with respect to the signature.

THE COURT: I do, and I think that the signature is something here that is for the jury to determine, if nothing else, because there is in the record at this point in evidence two tax returns and a whole number of checks, I take it, signed by Mr. Leonard.

MR. TIGUE: There is not one piece of evidence to indicate that he signed a single check, not one piece of evidence to indicate that he signed those tax returns. That is why I objected to them, on the grounds of relevance. They were taken subject to connection. No connection has been made and no connection will be made until the government gets from the accountant --

MR. MacDONALD: I refer the Court to the Union Carbide original contract, which Mr. Mitchell said he signed and Jack Leonard signed at a closing session, and they each traded copies. And if no other handwriting sample is admittedly genuine, there is direct evidence that that sample

is.

THE COURT: I will admit it in evidence.

(In open court)

(Government's Exhibit 74 was received in evidence.)

BY MR. MacDONALD:

Q Mr. Laski, I am going to show you Government's Exhibits 68 through 73 in evidence. I ask you, please, to examine those and tell the jury if you have ever shen those carbon copies of Leonard Process Co. Inc. invoices before.

A No, I have never seen these before.

Q I show you now a group of exhibits, Government's Exhibits 21, 25, 27, 29, 31, 33, 36, 38, 40 and 42, and I ask you if you were shown the originals which are depicted on those exhibits or carbon copies thereof at any time in the course of the conduct of the audit.

MR. TIGUE: I object to that, your Honor, because it is irrelevant. The question is, did he ask for them and whether or not they were received.

THE COURT: You may cross-examine him on that score. Overruled.

(To the witness:) You may answer.

A I have not seen them.

Q Were you shown in this portion of the audit any vouchers which had been detached from checks?

A On Union Carbide?

Q That's right.

A No; I haven't been.

Q Finally, would you look at Government's Exhibit 75, the second page, the yellow carbon copy, and tell the jury if you had been shown that at any point in the conduct of the audit.

A No; I haven't seen these, either.

MR. MacDONALD: We have nothing further on direct, your Honor.

221

MP 2

THE COURT: Ladies and gentlemen, at this point we are going to stand in recess. It is close to our closing hour. We will resume tomorrow morning at ten o'clock, and I will see you then.

(The jury left the courtroom.)

MR. TIGUE: Your Honor, before Mr. Laski leaves, may I have a word with him?

THE COURT: Please stay, Mr. Laski.

Now, Mr. Tigue, you asked for a break at the time Mr. MacDonald finished Mr. Laski's direct examination.

MR. TIGUE: Yes; I did, your Honor, mainly because I believed there would be some dispute as to the 3500 material. My information is that Mr. Laski conducted his audit during the period 1968, 1969 and 1970. I mean, that's when he worked on the audit.

In the course of the audit, I believe Mr. Laski generated a great many work papers. I see your Honor has been given a homework assignment by Mr. MacDonald, and you have a big stack of documents.

Furthermore, Mr. Laski has spoken to Mr. MacDonald on occasion, I believe, and perhaps Mr. MacDonald may have generated some notes. He spoke to Mr. Schulman, who is the special agent, who just walked into the courtroom, back in December, I believe, December of 1972.

I have not been given copies of those documents, either. I don't know what other records exist.

Work respect to the work papers, your Honor, I believe in my memo I gave you the citation of United States versus O'Connor, which is admittedly a net worth case, but I think in some instances this is not a normal case, in which I would be limited to the income items which the Government alleges were omitted.

As I hopefully demonstrated a little bit yesterday, the concept of adjusted gross income is that you take the gross income, you take away from that all the ordinary and necessary business deductions, and that gives you the bottom line, or the adjusted gross income.

It seems to me in determining what the true adjusted gross income in this case is, I ought to have a right to determine what expenses if any were looked into by the examining agents and whatever information I can use in there to attempt to show a lack of proof by the Government with respect to, perhaps, deductions.

I would candidly tell the Court that I don't intend to use this material as any extended fishing expedition, where I would keep an agent on the stand for an inordinately long period of time, going over every little expense and whatnot, but I do believe I have a right to determine, at least

MP 4

for myself, and to assist me in the cross-examination of Mr. Laski and other revenue agents, what work if any was done in respect to expenses and what work was done in order to correct what they regarded as the incorrect adjusted gross income.

I think the heart of the matter here, your Honor, is that the Government could have charged that gross income was omitted from the tax return, as they do in many cases. If that were the case, I would think my arguing position would be pretty much weakened, because whether a person took a deduction or had a proper deduction would be wholly irrelevant. At least, the Government would make that claim.

Here, income and related expenses are the determining factors as to how you arrive at the adjusted gross income. I think I need to know what work papers were generated by these accountants. It really relates to their direct testimony, and I don't believe we are giving up any IRS secrets by turning over to me to help me in the defense of Mr. Leonard work papers which were generated in connection with the audit.

I have been given some work papers, but they relate, by and large, as to whether income was included or not. This is particularly true in view of this $23,000 cash payment, to which I just objected at the side bar. That is a matter which

relates to a deduction, an expense in the year in question. The Government has seen fit in putting in the opening statement and the direct testimony of Mr. Laski that element, and I would like an opportunity to see what material they have in their files which relates to that item, because, frankly, I am not in a very good position to defend Mr. Leonard on that issue, because it is just one additional item which I didn't hear about until the eve of trial, when I received some of this 3500 material and the interview of Mr. Laski -- I don't recall if that was mentioned, but it may have been.

At any rate, I think I do have a right to take a look at Mr. Laski's work papers and see what he did. I don't think the Government is prejudiced by it. I think it clearly falls within the provisions of 3500 as papers which were generated by his own hand.

THE COURT: Mr. MacDonald, I will hear you.

MR. MacDONALD: Your Honor, it is probably easiest to address ourselves --

THE COURT: I take it that for the moment we are talking about Mr. Laski's work papers.

MR. MacDONALD: For your Honor's convenience, that consists of 3502-A-2 through A-6.

Your Honor, the first thing I would like to do is call to the Court's attention the closest case which we have

225

MP 6

been able to discover as an aid in this area, and that is the case of -- if your Honor wants to ignore the Shepardizing -- U.S. versus Oertle, 370 Fed 2d 719. This involves the special agent's report in an income tax case, a summarization document on the qualification following the special agent's direct testimony on certain limited matter and whether or not the whole report which he wrote is producible or only those matters which related to the direct.

The Court in the 10th Circuit held it was proper to limit it to the matters brought up on direct, even though numerous of the items of proof concerning the other matters in the case were of course contained in that summarization of the work.

Now, it is of interest to your Honor to note that 3501-A-4, the thickest of these documents, relates to 1965, the year as to which I believe there will be nothing in the Government's case. 3501-A-5 really isn't Laski's work papers at all, but they are, with the exception of the schedule, letters sent to various companies and the companies' responses, and I have included it only for the sake of completeness, since I am not sure that an auditor's set of work papers ought not to be considered for fairness to have the third-party checks as well.

3501-A-6 is a special sub-set which relates to the

Chinook Chemical Corporation, which was a special technical issue that this witness adverted to, which is not in the Government's case, and there will be no direct testimony concerning it, save for that passing reference by the witness to Chinook Chemical.

This contains various writings which were not actually penned by the witness but authored by Mr. Leonard's lawyer, and he has copies of those materials, so it is no secret.

I think the issue reduces itself to -- well, 3501-A-3 is the 1966 set of work papers. I have removed from that, Judge, and made part of the 3500 material given to Mr. Tigue those entries which relate to the Union Carbide deposits and payments in 1966. The rest of the issues in the '66 year, whether it is his wife's music business' T & E schedule or whether his own T & E schedule was in order are matters which I am sure Mr. Tigue will concede there was no issue on in this case and certainly no direct testimony of the witness on such items in the man's tax return.

I must say that I will doublecheck as soon as possible the $28,000 payment item and doublecheck and insure that everything that relates to it, in no matter what year it fell, will be made available to Mr. Tigue within an hour of the close of the court today.

3501-A-2 is Mr. Laski's work paper for 1967, one of the years in issue. Our position, as I am sure your Honor anticipates, is the same in respect of that exhibit. Each of the other income items, other contracts are excerpted, other companies' invoices are excerpted. There are schedules of legal expenses, schedules of T & E expenses, schedules of payments to all kinds of employees and other individuals, all of which relate to matters that the witness has not testified to on direct examination and which can really only serve the purpose of opening up those areas for examination on cross, and I don't understand why the T & E account is important, to look at in the work papers on the travel and entertainment account, and under the authority of the Oertle case, the witness' direct testimony can be limited, and once it is so limited, the cross-examiner must cross-examine without the aid and benefit of the portions which were not included in the direct examination.

That is simply one of the rules of the game, and when the direct examination is limited, and we don't charge in this case that he evaded taxes, and we don't charge the net worth theory, and we don't charge the bank deposits theory, and we concede in those kinds of cases that every item in a man's tax return and every item in the agent's work papers, including those items -- "I went to the probate court, and he didn't

inherit anything, and I went to the bank" -- in a net worth case, where all the sources of income are relevant and all the expenses are relevant, of course the auditor's entire work papers are producible. In this case we have a very limited area: the Union Carbide contract and the payments that were made pursuant to that. We have taken out those pages which relate to those payments, and we say that, really, the scope of direct is not more extensive than that, and the exhibits ought not to be produced under 3500.

THE COURT: Let me ask you:

First, taking the first count, the indictment charges an omission of $24,000-odd from purported adjusted gross income. Is it the Government's view that this sum of money is going to be attributable only to the Union Carbide contract?

MR. MacDONALD: Yes, sir.

THE COURT: Because Mr. Tigue's argument to me was that in order to dispel this figure from the case he had to go into all sorts of possibilities as to how that figure could have been arrived at by the charging authority.

MR. TIGUE: That is not exactly my point, your Honor. My point is that $24,000 is the total of checks received allegedly during the period 1967, but if in arriving at the adjusted gross income, that money was taken and expended

in legitimate expenses of business, the adjusted gross income figure would be right. According to Mr. Leonard's thinking, it would be in fact and in law 100 per cent correct.

If I can establish that, your Honor, that is an absolute defense to the charges in this case.

THE COURT: If you can establish that the $24,000 was a proper deduction?

MR. TIGUE: Yes.

THE COURT: All right. I follow that.

My next question to the Government is, what is the prejudice to the Government in giving Mr. Tigue these work papers, aside from the fact that if he decides to avail himself of them we would be here with Mr. Laski for a couple of weeks?

MR. TIGUE: No, your Honor.

MR. MacDONALD: I understand the principle in this circuit to be that a Government employee, albeit an auditor, as a witness is subject to leading questions even beyond the scope of direct by the cross-examiner, and I am not afraid at all of inquiries about the other areas.

I don't think we would suffer any prejudice if Mr. Tigue were to ask non-leading questions about the scope of the audit and the extent and the findings in those other areas. I think, however, that Mr. Tigue is permitted to ask

MP 11

leading questions under a decision I think I read by Judge Lumbard, where any Government agent is expectdd to be able to take care of himself on the witness stand, and once Mr. Tigue is forearmed with a raft of work papers upon a whole raft of issues, I am just afraid that despite his statement that it would not be two weeks, it would, and we would open up numerous other issues.

There has already been injected -- in front of the jury I kept my seat because of the strategy of conducting a trial, but there has already been injected in this case delays and the fact that the agents could have gotten information faster and the fact that they might have done the audit in a different way and in a more efficient fashion, and the pieces of all the other accounts of Mr. Leonard's return potentially exist for the cross-examiner to continue to raise such issues.

THE COURT: You mean, endeavor to raise such issues.

MR. MacDONALD: Yes; of course, and I really think that we should keep this down. In our bill of particules we limit and define the Government's case. We give the name of the check and the number and the amount, and that's the income. The proof will be that Mr. Leonard --

THE COURT: Do you have a copy of that bill of particulars?

MR. MacDONALD: I will hand mine up.

That is the income --

THE COURT: If I were to keep this, do you have another copy?

MR. MacDONALD: I think I have one here -- maybe I have it downstairs. I will provide the Court with a copy.

THE COURT: Let me look at this, and I will return this to you right away.

MR. TIGUE: Your Honor, the point is that -- that is exactly the point. He said that is the income which is omitted. Let's assume, for purposes of this discussion, that he is absolutely right and he proves on his part of the case or on his direct testimony that that income was omitted. That doesn't answer the question, your Honor, as to what adjusted gross income is. It answers the question as to what gross income is, but we are concerned not with gross income but with adjusted gross income.

THE COURT: We are concerned with an omission.

MR. TIGUE: Yes, your Honor, and the question is, the tax return of 1967 says the adjusted gross was $259,000, roughly.

THE COURT: Yes. He is saying that if you didn't omit that, the adjusted gross would be higher; right?

MR. TIGUE: Your Honor, what he is really saying

is that the gross is higher.

THE COURT: The gross is higher, and therefore I don't know what factors would be offset against this under other circumstances. But to some degree the adjusted gross would be higher, but everything flows from the omission.

MR. TIGUE: Yes, but if you stop me there, your Honor, if you stop me and say that the adjusted gross income should not be 259, that it should be 259 plus 24 -- suppose I could prove -- and there were related documents in those work papers which show that the money was expended for corporate purposes and was a legitimate deduction. The net effect on the adjusted gross would be zero.

THE COURT: I appreciate that, but I think you have to start with the omission and not the adjusted gross income, and if you can, for argument's sake dispel any wrongful conduct with regard to the 24,000, I don't think it makes a particle of difference whether the gross income were to remain the same, go up, down or anything else.

MR. TIGUE: I don't understand that, your Honor.

THE COURT: If there is no omission, then the gross income is going to settle where the facts and the law permit it to settle, or am I wrong about that?

MR. MacDONALD: I think that is accurate.

THE COURT: So that the crux of this is the omission

and not the gross income.

MR. TIGUE: I couldn't disagree with you more, your Honor. It seems to me if the gross income on a tax return -- Number one, Mr. Leonard thought it was correct -- if that is the case, that is an absolute defense if it can be established. If it can be established that factually and legally it is one hundred per cent correct, the Government can't possibly get a conviction here, no matter what Mr. MacDonald --

THE COURT: Are you prepared to deal with the omission?

MR. TIGUE: I want to be prepared in cross-examining the agents here to show what if any expense allowance they gave when they arrived at adjusted gross income.

Now, if they said, "Your gross income is $24,000 higher. We give you no credit for any related expense, and therefore your adjusted gross income is higher," I think I have a right to demonstrate to the jury that they improperly arrived at the adjusted gross income in this case, that they didn't do what they should have done.

Now, one further thing while I am on my feet, your Honor.

Mr. MacDonald says, "Oh, there was just a passing reference to Chinook." I am sure that wasn't casual; it was

planned, and there is a whole file, 3501-A-6, which relates to Chinook. I think he's lost on that one. It relates to the witness' direct testimony.

THE COURT: I would agree with you there, and I think you should be entitled to anything that bears on that subject to the extent that he is going to argue one inference from it and you are in a position to argue any other inference.

MR. MacDONALD: Very little of it is the agent's. We really have no objection to those portions which constitute work papers. Most of it is an exhibit prepared by Mr. Leonard's lawyer, and if we are going to get an opinion of counsel with respect to tax treatment --

THE COURT: That isn't 3500 material.

MR. MacDONALD: Certainly not.

MR. TIGUE: That is something referred to during the course --

THE COURT: That is not a statement of his with regard to something he testified about. That is a statement of your lawyer.

MR. TIGUE: Your Honor, I have another purpose with respect to that document.

THE COURT: I would assume you already have a copy of that.

MR. TIGUE: I do, your Honor.

THE COURT: We don't need it from the work papers.

MR. TIGUE: No, but there are other purposes --

THE COURT: Well, I will cross that bridge when I come to it, but in terms of what has to be turned over to you, I will direct that you get the work papers with regard to the $28,000 involved in the Canadian transaction, whatever it is.

MR. MacDONALD: I think there are two Canadian aspects. Chinook is the matter the witness said was the last subject of the conversation, a technical issue, which involved Canadian law concerning securities and the need to purchase securities with fees as distinguished from the $28,000 cash payment to Catalytic Construction.

THE COURT: I think it was $28,000 Mr. Tigue was talking about.

MR. MacDONALD: I will produce everything on that item within an hour of the close of business today.

Chinoook Chemical has more exhibits and is a very bulky, expensive legal opinion.

THE COURT: This is from the lawyers?

MR. MacDONALD: Yes, sir.

MR. TIGUE: I have all that.

THE COURT: Mr. Tigue has it. All I am saying is, turn over the work papers on Chinook.

MR. MacDONALD: Catalytic --

THE COURT: Chinook is the second one he discussed in this conversation, and the jury has heard about it, and to the extent it is now in the case I would turn it over.

Now, I am still troubled about this, and I am not quire sure. Mr. Tigue, I agree with you --

MR. TIGUE: I will try and make your Honor's life a little easier.

THE COURT: We are down to the last item, are we not, and that is the work papers generally on the theory that you are entitled to go into anything in this case that makes one arrive at one adjusted gross as opposed to another.

MR. TIGUE: Certainly for '67 and '68, your Honor, I maintain that firmly. But 3501-A-4, according to Mr. MacDonald, relates to 1965. Now, assuming that the $28,000 cash transaction does not relate to 1965, I would not even ask your Honor to have to look through that file, because '65 at least yet is not in this case. I am sure it is soon going to be in here.

So I would withdraw my request with respect to 3501-A-4, assuming it only relates to 1965. If there is any '66 or '67 in there, I do not consent to it, because in '66 we apparently have the $28,000 transaction and this alleged omitted income from Union Carbide in these three checks, a

thousand, a thousand and ten thousand dollars. That, I believe, takes us to A-5, which I believe are the letters to various companies, and I would respectfully request that I be given an opportunity to look at that, your Honor.

THE COURT: For what reason?

MR. TIGUE: If it relates to 1967 and 1968, because it may contain information which is required by Section 3500 and which I would have a right to examine Mr. Laski about.

THE COURT: Now, which are the exhibits that you want me to consider, so that I am --

MR. TIGUE: All of them, your Honor, except A-4, which relates to 1965 and which Mr. MacDonald says is the largest A-2 is with respect to '66. I would guess -- I don't know what to do about '66. It's just hanging there. There is no charge in the indictment, so my argument on adjusted gross income falls.

But with respect to 1966, the Government here made a claim that the ten thousand dollar check from Union Carbide was deposited into his account at Franklin National Bank. Well, there was no account for Mr. Leonard at the Franklin National Bank at that time, and if there are documents in 1966 which relate to that, I would like to demonstrate that to the jury through the cross-examination of Mr. Laski, and I think it relates to this ten thousand dollars bit, which has

been interjected in the case for the alleged purpose of proving wilfulness.

Now, I have an opportunity to rebut that, I believe, your Honor, and if the papers are in Mr. Laski's files I would like to have a look at them as well.

THE COURT: So I must review A-2, 3, 5 and 6. Is that what it amounts to?

MR. TIGUE: Well, 6 you have decided. I get all the Chinook stuff except the opinion.

THE COURT: My homework is confined to 2, 3 and 5?

MR. TIGUE: Yes.

THE COURT: Very well. I shall reserve decision.

MR. TIGUE: May I call your chambers early tomorrow, your Honor, because it is going to take a little while to wade through that, if I get it.

THE COURT: Well, depending on how I conclude, I will see to it that you have enough time, and I don't think, frankly, that I will impose that burden upon you before the morning begins tomorrow. I will rule, and then we will go ahead, and you shall receive such time as you need.

MR. TIGUE: Thank you, your Honor.

Just one or two other matters whle we are here.

Frankly, my curiosity is piqued with respect to the ex parte conferences. Will I learn of those at some

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point?

THE COURT: I assume at some point that may occur.

MR. TIGUE: One other thing:

Mr. MacDonald said originally that he thought he would conclude his case around mid-day tomorrow. I wonder if that estimate is still good.

MR. MacDONALD: It's backed off by at least twenty-four hours now.

Your Honor, there are some additional A exhibits, and I think I can tell the Court, 3501-A-7 is another set of MacDonald notes. This one was done a couple of days ago, and I have made some final changes on the sheet that he actually employed in questioning Mr. Laski, and I could add that, as I did with the previous witness.

THE COURT: All right. Make it A-7-A.

MR. TIGUE: Might I inquire, your Honor, if that also contains the notes of the various conversations that Mr. MacDonald has had with Mr. Laski?

MR. MacDONALD: The piece that I just handed up was drafted by myself within the last day or two. That is all the writing below the box. The second page constitutes an earlier draft. The second page of what was originally xeroxed is 3501-A-7, which is an earlier draft prepared when the trial was scheduled at an earlier time.

The last page is a set of notes that I made in connection with a telephone call at some very early stage of these proceedings.

3501-A-9, your Honor, is the original, which I haven't reproduced from my set -- but your Honor has it -- these are all items which we went to a great deal of time to get in response to Mr. Tigue's letter concerning what he contended was 3500 materials.

3501-A-9 is originals of what look like originals of the payroll rec ord of the IRS pursuant to which Mr. Laski got paid back in 1969, and I think one -- I am sorry -- '68 -- and one copy in 1970, your Honor is looking at a blocked-out portion which masks other cases. The original, which your Honor has now in his hand, of course, did not have the blanking out.

THE COURT: I see.

MR. MacDONALD: I don't believe there is any issue of alibi or Mr. Leonard's non-presence at the one face-to-face encounter which he had with Agent Laski, and in the absence of that issue, this is just really --

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THE COURT: This is not a statement, is it?

MR. MacDONALD: Agent Laski put his hours in, and Mr. Tigue put it in his request, and Mr. Laski had to go over to Bayonne, New Jersey, and dig through many dusty boxes to come up through it. We object because it is not a statement; it is a wage and hour record.

THE COURT: I will agree with you. There may be some other reason it may become relevant, but it is not a statement.

Mr. Tigue, do you contend it is a statement?

MR. TIGUE: I certainly do, your Honor. If he says he was working on the case in 1968, it has been done in 1968 contemporaneously, and here are the time charges on the Leonard case, it is very relevant.

I also think it went to the motive for bias if he spent five thousand hours working on this case, that he had motive to see that he produced something at the end of that.

THE COURT: I would agree with you that there are other grounds for using the amount of time spent, for establishing what it is. I don't believe it is a 3500 document.

MR. TIGUE: For instance, he said he had a meeting in March, let's say, on his direct testimony. And if he

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wrote down anything with respect to that meeting when it took place and how many hours he spent and so forth. He said he took a 40-minute conference with my client. Maybe he will say -- I don't know what he will say. I think it is statement.

THE COURT: I disagree with you there, but it may become relevant by laying a foundation in some other way.

MR. MacDONALD: Finally, Judge, 3501A-1 consists of a memorandum authored by the person whose name is there, Agent Schulman. On the second page are notes authored by Schulman. I exercised care not to ever show Mr. Laski this memorandum and these notes, and I never asked him to adopt or otherwise approve it. Agent Schulman is here in court to give whatever testimony Mr. Tigue desires in respect of his notetaking practices and the subject of their being substantially verbatim. And we tender them in accordance with Mr. Tigue's request that we have all people here for such a Campbell hearing.

THE COURT: I suppose we have to.

Mr. Tigue, do you want to --

MR. TIGUE: Yes, I do, your Honor. I want to ask Mr. Schulman.

THE COURT: Mr. Schulman, will you come up, please.

ROBERT SCHULMAN, called as a witness, being first duly sworn, testified as follows:

THE COURT: Mr. MacDonald, I take it in the first instance you would inquire as to --

MR. MacDONALD: I will be happy to conduct the examination. I thought that the Court -- I have forgotten which opinion it is in the Second Circuit -- conducts an inquiry without revealing the contents to defense counsel, to--

THE COURT: Absolutely.

MR. MacDONALD: --insure that the Court is satisfied that the witness' notetaking practices don't bring him within the statute.

THE COURT: Do you have another copy of this?

MR. MacDONALD: Yes, sir.

DIRECT EXAMINATION

BY THE COURT:

Q Mr. Schulman, I am going to put beforeyou 3501A-1.

A Yes, your Honor.

Q Do you remember making this memorandum?

A Yes, I do, your Honor.

Q Tell me how it came to be made.

A I made a telephone call out to the Coast and contacted Revenue Agent Mortimer Laski.

Q You made this phone call or November 27. 1972 I

see.

A Yes, your Honor.

Q All right.

A From my office at 120 Church Street.

MR. TIGUE: May I have the date, your Honor? I didn't hear it, I am sorry.

THE COURT: November 27, 1972. Between 2 p.m. and 2:12 p.m.

Q During the course of that telephone conversation Mr. Laski made certain statements to you, did he not?

A Yes, he did.

Q At some time this memorandum, this piece of paper, 3501A-1 was prepared. When did you prepare this piece of paper in relation to that telephone call?

A Within 24 hours, as is my usual practice of any memorandum of conference.

Q Did you make any notes of it while Mr. Laski was talking to you?

A Yes, I did, your Honor.

Q What kind of notes do you recall making? Do those notes still exist, by the way?

A No, sir.

Q What kind of notes did you take, in terms of detail? That is what I am getting at.

A Actually, it would be phrases that I would want to stick out, or what would be important relative to whatever answers or statements Mr. Laski would be giving to me. It wouldn't be a sentence. It would be more a phrase, possibly two or three words, to help me in refreshing the points that I wanted to put down in the conference memorandum.

Q Do you have any specific recollection of when you dictated this memorandum in relationship to the telephone call?

A It in fact wasn't dictated, your Honor. It was written out on pencil -- in longhand.

Q I see.

A And given to a typist, proofread by me, and signed.

Q Do you have any specific recollection of this very instrument as to when you wrote out the longhand version?

A As I say, my practice always, because of memory being what it is, within a day at most.

As to this particular memorandum, I couldn't remember whether it was within an hour or two hours after the telephone conversation. And I would assume, given the fact that it was reduced to typing, that you threw away the longhand version?

A Yes, your Honor.

Q Looking at the numbered paragraphs herein, where does the language come from with which you clothed the thoughts that you put there?

A The language came from my reading Mr. Laski's work papers, which were in my possession at the time, and in trying to help him refresh his memory, telling him that I am reading this from your work papers, can you recall, and the quotes around it were both from what I read from Mr. Laski's work papers to him over the phone and his reply that, yes, he could recall that terminology, those phrases being on his work papers.

Q Mr. Schulman, what I am getting at is: As to the balanace of it, is this your language to express ideas, or is this his language to you over the telephone?

A I don't know what you are referring to when you say "language," your Honor. Are we speaking of item 3? Or the entire memorandum?

Q Take, for example, the second and the third lines of item 3, beginning with the word "he" and ending up with the word "work papers."

A Oh, this would be my language interpreting what he had related to me.

Q You were just communicating and putting on paper the substance of what he said to you.

A Yes, your Honor.

Q As best you can recall.

A Yes, sir.

THE COURT: Mr. Tigue, do you want to ask any questions?

MR. TIGUE: Yes, if I may, your Honor.

CROSS EXAMINATION

BY MR. TIGUE:

Q Did I hear you right, Mr. Schulman, that there are some quotation marks around parts of your memorandum?

THE COURT: Mr. Tigue, I will say to you there is one. There is one place in quotes, that is correct.

Q Is that exactly what Mr. Laski said to you?

A He didn't say it to me, since he didn't have the memorandum or the language in front of him. It was his work paper that was in front of me that I was reading to him over the phone and trying to help him recall the work paper and what he had put on the work paper.

Q And he said, "Yes, that's right," and you put the quotation marks on it; right?

A Well, the quotation marks in referring to his work papers as to what it said.

Q I don't think that answers my question. You read the work paper to him, and you said, "Is that right?", and he

said, "Yes, that is right" -- correct?

A To the best of his recollection.

Q Yes. And then you put the quotation marks around it?

A The quotation marks are mine.

Q Yes.

A Yes.

Q Based on what he said to you?

A No, based on what was the subject matter on his work papers.

Q He adopted what you said.

THE COURT: Mr. MacDonald, do you have before you a copy of 3501A-1?

MR. MacDONALD: I do not, Judge. I was going to tender to the Court the work paper. I thought that was what your Honor wanted.

THE COURT: No, no. The reason I asked is this: We are playing what amounts to a judicial What's My Line here over something that I think is of absolutely no consequence whatsoever.

MR. TIGUE: Is it in evidence? Is it part of Government's Exhibit 89,which is the Laski work paper? If it is, what are we getting at?

THE COURT: That is exactly what I am getting at.

It seems to me we should inform Mr. --

MR. MacDONALD: Yes, sir, it is exactly what was on the bottom of the work paper, and the witness has read it accurately and noted it accurately.

THE COURT: Yes. He was asked whether he made that notation in his work paper, and he said, "Yes, I noticed it and I did." If you want that portion of this exhibit as having been confirmed by him in 1972, I will make it available to you.

MR. TIGUE: I don't, your Honor, because I have it right here.

THE COURT: All right.

BY MR. TIGUE:

Q Mr. Schulman, when you took your notes and you had them typed up, you took the substance of the conversation you had with Mr. Laski down on paper, didn't you?

A Yes.

Q And you didn't omit anything of substance, did you?

A Not in my opinion.

Q So what remains in your memorandum is what is substantially said by Mr. Laski, is that right?

A Relative to the questions that I posed to him over the phone.

Q And your notes were made contemporaneously with the telephone call; right?

A Within 24 hours.

Q No, no. The notes were made?

A Oh, the notes, yes.

Q And this is all that is left because the notes are destroyed, is that right?

A That is right.

MR. MacDONALD: What is page 2? Because if page 2 ought not to be attached, I will take it off and put it back in the government's files.

BY MR. MacDONALD:

Q Mr. Schulman, can you identify the handwriting on page 2?

A Yes, I can.

Q Yours?

A Yes, they are.

Q Anything to do with the Laski phone call?

A Yes, it did.

BY MR. TIGUE:

Q Will you tell us what, please.

A There's an extension 4849. I don't know what that is.

MR. MacDONALD: Don't read the contents.

THE COURT: The mechanics of it --

A Evidently there is some information, personal information, that Laski had submitted to me, that I thought I might need for further use, but wasn't of necessary importance to include in the memorandum itself, for any future reference relative to contacting Mr. Laski in the future.

So that it seems that particular --

Q Telephone number.

A -- notes made during the conversation, telephone conversation with Mr. Laski, were not destroyed.

MR. TIGUE: I think on that record, your Honor, Mr. Schulman has testified that essentially and substantially verbatim it was contemporaneously made, and I think it falls within subsection 2.

MR. MacDONALD: The problem is with the word "substance." Traditionally lawyers and judges ask witnesses, "If you can't remember the precise words," they ask whether in substance or in essence the man said what, and tell us what he said. Of course, then when Mr. Tigue asked if the notes are substantially what he said, the word becomes a statutory phrase.

MR. TIGUE: Of course, one other problem I have, your Honor, is that I have the feeling --

THE COURT: Would you mind if I spoke to Mr. MacDonald here for one minute out of your presence?

MR. TIGUE: I haven't been able to object all day today, your Honor.

THE COURT: All right. Mr. MacDonald, come up here for one minute. I will be perfectly glad to put this on the record.

(At the bench)

THE COURT: What is the significance of this?

MR. MacDONALD: Your Honor, since this is limited to the work paper authentication and is not silent--is wholly silent with respect to the conference which Laski had face to face with taxpayer and all the subjects that were discussed at that conference, the cross-examiner would be entitled and could with some effectiveness say, "Mr. Laski, did you tell Schulman about any of this, these facts that you talked about in the conference? Here is Schulman's memo of that conference. Does that refresh your recollection that you didn't mention anything?"

The government can never recover from the negative. You can't ever put back in the jury's mind what wasn't talked about.

THE COURT: Mr. Tigue, come up here a minute.

Mr. Tigue, so that there is no failure to disclose

to you, I just want you to know what we have currently been discussing.

Mr. Reporter, read back what we have said thus far at this conference at the bench.

(Record read)

THE COURT: Mr. Tigue, you have now had read to you everything we said up here. I appreciate the government's position, and I have seen many, many effective cross-examinations since I have been on the bench, people saying, "Why didn't you put this down, why didn't you put that in the memorandum, why didn't you put the other?"

MR. TIGUE: I represent to the Court, your Honor, that I would not say to Mr. Laski, "Why didn't you put it in the morandum or what not?"

THE COURT: "Why didn't you talk to him about this? Why didn't you tell him about that? Why didn't you discuss this?"

MR. TIGUE: I tell you frankly, your Honor, one of the things I am concerned about is that there was once upon a time a Count 3 in this indictment which was based on grand jury testimony of Mr. Schulman. Mr. Schulman's testimony was based on conversations with Mr. Laski.

THE COURT: This does not get near that, in my opinion.

MR. TIGUE: If I ask a question on cross-examination and it is not proper, I am sure there is going to be objection and it is going to be sustained.

THE COURT: But if you are in possession of a memorandum --

MR. TIGUE: This memorandum? What memorandum?

THE COURT: That is a legitimate area of cross-examination. "YOu didn't talk about so-and-so, did you?"

MR. MacDONALD: You can refresh the witness' recollection with a banana.

MR. TIGUE: I am missing something in this conversation. This is a memorandum of a conversation that Laski and Schulman had. And if they talked about -- well, if they talked about anything that was going into direct examination, it seems to me it is 3500 material.

THE COURT: No, this is questionable as to whether or not this is a substantially verbatim recital of his oral statement.

MR. TIGUE: I think the witness said it was.

THE COURT: No, he doesn't. He said that he took a phrase or two, only a couple of words.

Even passing the question of whether you take it from the original notes into the handwritten notes, which I assume are the same as this, to make it a contemporaneous

statement, I have a question as to whether it is a substantially verbatim recital of an oral statement. But nevertheless it appeared to me to be a perfectly innocuous instrument, and my question to Mr. MacDonald was "So what?", and his answer to me, which makes perfectly good sense, based upon a lot of very effective counseling of defendants that I have seen, is that the examiner will say, "Why didn't he tell you about this? How come you never discussed that?", and he has a legitimate concern.

MR. TIGUE: It is either proper of it is improper, your Honor.

THE COURT: What?

MR. TIGUE: I think that --

MR. MacDONALD: You just don't have the piece of paper, that is all.

THE COURT: Do you want to ask any more questions while we are at it?

MR. TIGUE: No, your Honor.

THE COURT: What?

MR. TIGUE: No, your Honor.

THE COURT: Do you want to ask Mr. Laski any questions on anything having to do with this exhibit?

MR. TIGUE: Do I?

THE COURT: Yes.

MR. TIGUE: No, your Honor. You know, I just should share --

THE COURT: I will reserve decision on this overnight.

MR. TIGUE: If I may share this, your Honor, what concern I have with respect to Mr. MacDonald: I accept his representation that he does not take substantially verbatim notes, but I don't accept his characterization. I think that when he says that he means that, that he doesn't do it; but I think that what is substantially verbatim is not a matter of fact which he would testify to as a witness; it is a matter for the Court. And I think that when witnesses sit down, I hate to go through this whole trial and wonder what Mr. MacDonald is writing notes about. I am sure if somebody tells him something he carefully writes it down, particularly if it is important. And what happens, as I have seen in many cases, is that you get a piece of paper, where only the phrases are substantially verbatim, the rest of it is characterizations or muses or doodles; but I just can't believe that Mr. MacDonald would sit down with a witness for hour after hour, meeting after meeting, and not write anything that is at all word for word what the witness said. It is just incredible to me.

I don't want to have to go through the business

of putting him on the stand, but I --

MR. MacDONALD: If you don't want to waive my testifying, I guess I should be called; otherwise you have an issue; right?

MR. TIGUE: No, it seems to me I fish or cut bait. OK, I ask that Mr. MacDonald take the stand. I don't want to burn up anybody's time, but it seems to me I have an obligation to pursue that.

THE COURT: All right. You have nothing further of Mr. Schulman?

MR. TIGUE: No, your Honor.

THE COURT: You may step down, sir. Thank you.

(Witness excused)

W. C U L L E N M a c D O N A L D, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Mr. MacDonald, we are talking in this case about Exhibits 3501A-7 and 3501A-7-A; correct?

A Yes, sir. I don't have copies of those.

Q Those are these two.

A I can tell your Honor of the circumstances surrounding their preparation.

Q Yes. Will you please go into each of those

exhibits in order and tell me about the circumstances of the preparation.

A The last page of 3501A-7, containing the least writing, are notes that I made during a telephone conversation with Agent Laski prior to the grand jury presentation. I am uncertain how long prior.

With the exception of his name and telephone number, there are ten words in three boxes and two circles, circled with connecting arrows. I am confident -- one of the words is a name --

THE COURT: Let me look at it.

I can state that I see nothing here that could conceivably be a su bstantially verbatim statement of anything.

Q Go ahead.

A The next most, in chronological order, the second page of 3501A-7 is my Q and A sheet prepared, I believe, in November, prior to the then scheduled December trial date. Above the line is a listing of what I was going to select as 3500 material from the various potential pieces of 3500 material on the work papers, with lots of arrows and lines, trying to identify relevant documents.

Beneath the line is an outline of the examination. I am confident I made this without any discussion whatsoever

with Laski. It was done in his absence while I studied the documents. I have reminders of notes to myself to be sure and ask him certain questions.

I have what were the numbers of the government exhibits, and they no longer bear the same numbers.

The last page, the top page of 3501A-7, contains only the final 3500 selection in the agent's name. That was the status of this until a day or two ago when I filled out my final outline of examination, and that is the balance.

Q Which is a single sheet 3501A-7-A.

A Yes, sir.

Q When did you fill out the balance?

A Within the last 36 hours. That is my best recollection.

Q Was any of that done contemporaneously with an interview of Mr. Laski?

A I think, once again, I prepared this in the evening hours after I'd finally shooed the last of the agents out of my office and had a chance to sit down and collect my thoughts concerning the exhibits that I intended to get into evidence. It contains a word or two for the whole subject that I intended to ask the witness. I know this was made after the deposition of Agent Laski in which most of these matters were gone into and which constitutes, of course, the

prime piece of -- this is a zinger -- the prime piece of 3500 material. I am sorry, Mr. Tigue.

THE COURT: Do you have any questions you want to ask, Mr. Tigue?

MR. TIGUE: Yes, your Honor.

CROSS-EXAMINATION

BY MR. TIGUE:

Q Mr. MacDonald, whenever you sat down and talked to Mr. Laski, did you make notes as to what he said?

A I did not.

Q Never did.

A That's right.

Q And the only notes you ever made in any shape or form related to Mr. Laski are the ones that have just been identified by you?

A That's right.

Q Does that include the telephone conversation you had back around June of 1974?

A Yes. That's the first page that I identified.

THE COURT: Which is page 3 of 3501-A-7.

Q Those are the only notes you ever had which had anything to do with Mr. Laski?

A That's right.

Q And they were not made during the course of the

interview?

A That's right.

MR. TIGUE: I lose.

THE COURT: I will see you gentlemen at 10 in the morning. I will reserve decision.

MR. TIGUE: I am getting Chinook tonight, is that right, your Honor?

MR. MacDONALD: Yes.

(An adjournment was taken to January 15, 1975, at 10 a.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Wendy Brewer	73	80		
Henry Ray Mitchell	86	110	156	
Victor B. Czajkowski	157	177	190	191
Mortimer Laski	194			
Robert Schulman	242	246		
W. Cullen MacDonald	256	259		

EXHIBIT INDEX

Government	Identification	In Evidence
1, 2		78
3		97
65		101
66		108
75		109
67		114
85		163
86		164
21,25,29,31,36		168
38,40,42,27,33		168
4 through 20,22		172
23,24,26,28,30,32,34		172
35,37,39,41,43		172
68 through 73		172

EXHIBIT INDEX

Defendant	Identification	In Evidence
B		118
L		
Government		
76		200
77		200
74		219

UNITED STATES OF AMERICA

vs. 74 Cr. 599

JACKSON D. LEONARD

January 15, 1975
10:00 a.m.

(In the robing room.)

THE COURT: Mr. Kirby Peake, alternate 1, asked to see me about a scheduling problem of his for next week.

In other words, he wanted some idea of how long the case would go. I told him that my feeling was that it would probably go into Monday or Tuesday in any event, so therefore some commission to which he was appointed by the Governor that he has to convene, he is going to convene on Friday of next week.

So Mr. Peake and I conferred about that matter and that's the substance of our discussion.

MR. MAC DONALD: We brought to the Court's attention the mail watch issue on the opening of the trial, and I made reference to it at that time.

I am advised that Mr. Tique intends to ask this witness, despite the witness' deposition testimony, which I will describe in a moment, about whether the witness had knowledge of whether or not a mail watch was employed in respect to Mr. Leonard's mail.

In the deposition, Mr. Laski said under oath that he had no first-hand knowledge as to how that data was obtained. As your Honor will recall, in the beginning, he was a mere auditor and got the information from a confidential source. In the last six months before he went to California, he had some supervisory responsibilities with the FBA Project.

That was 1970. The mail watch ended a year earlier. So he has only hearsay testimony.

Our application would be that no proper question --our application at this time -- Mr. Tigue intends to ask Mr. Morris, and at that time the issue may be interject. But I don't think he can ask Mr. Laski about mail watches.

THE COURT: Mr. Tigue, isn't Mr. MacDonald right, that he can't give you any competent testimony?

MR. TIGUE: Well, I have the expectation that he will answer along these lines. In the deposition, when I asked the question, Mr. Laski gave part of the answer, and Mr. MacDonald stopped him from giving any further information. It later developed in the testimony that he was not a mere agent. He turned out to be one of the coordinators of this project.

Now, the fact that he didn't attend the mail watch doesn't make it hearsay testimony, because if he is

an integral part of the project, indeed, one of the leaders of it --

THE COURT: Well, what is the purpose of getting into this.

MR. TIGUE: The purpose, your Honor, is that this is a mail watch conditioned not only in the beginning of 1968 but in 1969, when he himself was conducting an audit of Mr. Leonard's business.

Number one, it goes to his bias or interest, in which case, it wouldn't be hearsay, what was told him. It would indicate his state of mind when he came to Mr. Leonard and what he had in mind in the way of an audit or criminal prosecution.

If he came to Mr. Leonard as a completely unbiased, neutral auditor, or if he came with the idea in mind that he was to prove a case against Mr. Leonard, makes a difference.

I believe I have a right to show whatever bias or interest he has, to the jury.

Secondly, as a substantive matter, your Honor, we already have in evidence an affidavit which says he doesn't have a Swiss bank account. The Government is going to attempt to put in some checks, and I am going to attempt to counter some of that, and part of the proof, your Honor,

will be the mail watch itself, namely, if I can establish that Mr. Leonard was getting mail from Switzerland and I can identify the bank, I think that can be helpful to my defense, and I don't care at the moment to disclose the full extent of it, certainly not to Mr. MacDonald, until he proves what he intends to prove. I think it's one of the material issues in the case.

The only reason the Government is objecting is because they don't want the jury to know that they subjected Mr. Leonard's mail and other people's mail to mail watch. I think it's highly pertinent to the issues that the Government itself has raised.

It's in the opening statement and some of the exhibits there, and I think I have a right to pursue it completely, your Honor. I think I have a right to establish that he was one of the members. Foreign Bank Account Project and --

MR. MAC DONALD: Your Honor, this is the part of the deposition. The questioning continues for several pages, elaborating on his state of knowledge.

MR. TIGUE: I can get the reference, your Honor, where he was a coordinator at a later date. And part of his knowledge when he began -- I don't believe I am bound by his answer. After all. He is a Government witness and

subject to cross examination, and I don't have to accept what he says in a pretrial examination. I have the right to probe into it. I was cut off --

THE COURT: Mr. MacDonald, I am going to overrule that objection.

MR. MAC DONALD: Judge, I gave you a case. I see the book here. In that case --

THE COURT: I agree with you on the propriety or the inadmissibility of the letters, the letters and the postage meter numbers. That is now the law of the case. But Mr. Laski has given oral testimony concerning conversations with Mr. Leonard, which you would doubtless argue have certain incriminatory significance.

It seems to me that Mr. Tigue is entitled to ascertain whether or not to say if the evidence wouldn't demonstrate that Mr. Laski is such a gung ho investigator --

MR. MAC DONALD: We have no quarrel with that.

THE COURT: -- and that he was really out to make a case here and, arguendo that he would stretch the proof to make a case -- that's what in effect Mr. Tigue is saying.

Now, that's an entirely different purpose and it seems to me for that purpose his knowledge of all of the efforts that were being made here in this regard might have some relevance. It's not to be a re-argument --

MR. MAC DONALD: He gets hearsay knowledge from a supervisor --

THE COURT: No, Mr. Tigue says he was there working on it. If the man says "I wasn't there", that's the end of it.

MR. MAC DONALD: Here's a case where the prejudice --we concede that the fact that he was a coordinator in the last six months before transfer to California of the Foreign Bank Account Project, of which Mr. Leonard's case was one, is something which goes to bias and interest, and Mr. Tigue can probe that supervisory role and his investment of two years' time on that project.

We submit that to go one step further and say, "Did somebody in the project look at another man's mail?" is so prejudicial or conceivably so prejudicial towards the Government that the additional bias or interest that it might show, if he ever heard from somebody that somebody in the project looked at the mail, it really doesn't add to his bias or interest.

His interest comes from being assigned to the project and being a supervisor and working on the project and not by the means employed by another to put one piece of information into the project.

It's sort of like a narcotics case, I suppose.

We could hypothesize a case where the case agent who had worked on the case for two years, heard that another agent might have unlawfully searched an apartment, and surely the Government can't defend against unlawful searches and seizures in the jury's mind and explain to the jury that mail watches are legal and have been legal for years, and that the IRS was acting advisedly when it employed this device, and we have to then try and show that we weren't striking a foul blow.

That's the problem. I don't have any quarrel with bias and interest up to everything he did. But when we come to the unfair blow, the bloody shirt, I don't know how to defend against that.

THE COURT: Suppose I were to observe to the jury that I had ruled as a matter of law that this was an appropriate tool?

MR. TIGUE: I would object to "appropriate", your Honor.

THE COURT: I ruled as a matter of law that the evidence obtained this way is admissible.

MR. TIGUE: That would be different.

MR. MAC DONALD: And a lawful evidence-gathering technique. It was held in this case that the evidence that Mr. Laski may have heard about from others was lawfully

obtained.

THE COURT: Was lawfully obtained. Mr. Tigue, how about that?

MR. TIGUE: Was lawfully obtained -- let me think about that a little bit.

THE COURT: I think Mr. MacDonald has a good point, and I don't think you should be permitted to argue to the jury the inference that this was unfair, given the Court's ruling that it was a lawful mail watch.

That's his legitimate concern.

MR. TIGUE: Well, the argument I intend to make to the jury would be a proper one, namely, that this agent came in, and he wasn't fair and unbiased. He knew about this and --

THE COURT: That's different. Mr. MacDonald is concerned that the jury is going to get his inference that this was an illegal obtaining of evidence, and that inference is inherent in the sheer mail watch.

MR. TIGUE: I would request that the instructions come at the end like all the other instructions. If one is singled out it rises to a higher level of importance.

THE COURT: All right.

Suppose I state to the jury that this mail watch had been ruled by me prior to the trial to be a lawful one?

MR. MAC DONALD: And further that it was only admitted in this trial for that, showing bias and interest on behalf of Mr. Laski and for no other purpose, and the jury shouldn't consider it --

THE COURT: Shouldn't consider it in any way.

Mr. Tigue?

MR. TIGUE: I would agree with language along those lines, your Honor, but I would like to know the preciase language, and if I have an exception or a counter-request, I would like an opportunity at that time.

THE COURT: All right. I think that would solve the problem. I will give such a charge to the jury and you should be aware in your summation that I am going to do that.

MR. TIGUE: Just one or two other matters, if I may, your Honor.

I think the Government will be concluding its case probably sometime tomorrow, and I have to get my house in order and one of the points is character witnesses.

Mr. MacDonald has informed me that he has information that Mr. Leonard was arrested, as he said, more than one time. I must tell your Honor that that is completely contradictory to the evidence or information that I have, and I have asked Mr. MacDonald for a yellow sheet. I believe

he said that none exists but that he had a conversation with the arresting officer.

I would request Mr. MacDonald, through the Court, to furnish me with whatever information he has of Mr. Leonard's prior record, if any.

THE COURT: Am I required to do that?

MR. TIGUE: I think it's a discretionary matter, your Honor.

MR. MAC DONALD: I'm not even sure I would be in a position to comply without re-examining my file, and I don't know if we vigorously object, depending on my state of information. I don't think I have to go down now and telephone people to find out.

THE COURT: As I recall the rules in that area, Mr. Tigue, you are inquiring as to eliciting all the good information that is afloat in the community. Mr. MacDonald is entitled to inquire to see if the witness is aware of negative things that are afloat in the community. It doesn't seem to me that he is required to give you a bill of particulars in advance of the negative things in advance that he thinks are afloat in order thatyou can determine whether you want to use these witnesses.

It seems to me that you have got to ascertain that through your own client and draw your own conclusions.

MR. TIGUE: I would agree, your Honor. I certainly wouldn't want a bill of particulars, but it seems to me with respect to a criminal record -- I am not concerned with bad rumors that may be circulating, but my information is directly to the contrary, and I would hate for the question to be put to the character witness, even if Mr. MacDonald has a good-faith basis for it, that it may be a different Mr. Leonard. But how can I defend against that unless I know the details and can find out?

MR. MAC DONALD: There's no need to go into this unil I re-examine my files.

THE COURT: Mr. MacDonald, if there is a yellow sheet, I think you should disclose it.

Beyond that I shall issue no directions.

MR. TIGUE: Two very short matters, your Honor.

Going home late last night, I had the feeling that yesterday on at least one point, I had been had in Court with the admission of the contract in evidence with all the holes in it, and the felling I have is that Mr. MacDonald said this has been produced pursuant to Court Order and subpoena. And I didn't object to that.

Now, the jury doesn't know where those holes came from, and I think I have a right to a statement on the record that when that document was produced pursuant to

subpoena that it wasn't in the condition that it was entered in evidence, namely, that there were no holes in it.

THE COURT: I think you are entitled to that. I thought that was in the record.

MR. MAC DONALD: For timing purposes, I think in all likelihood that matter will be fully aired to this jury at some point in some appropriate way. I would just say that before the case goes to the jury, at minimum, if it is not otherwise aired, we will make such a statement. I don't think it is part of the Government's case to say -- I don't know why Mr. Tigue is concerned about the holes. The holes weren't admitted into evidence.

THE COURT: Well, I don't think the jury's attention -- they haven't even seen the original of this exhibit at this point.

MR. MAC DONALD: That's right.

THE COURT: So that they have had no opportunity to observe them, speculate about them or otherwise, and they aren't in evidence.

Mr. MacDonald has said that before the jury does observe them, you are entitled to a statement to that effect, and I concur in that.

MR. MAC DONALD: I have a feeling that Mr. Laski will be questioned about his knowledge of scientific tests

and so on.

THE COURT: I am sure you will get such a statement.

MR. TIGUE: One Government witness is a man from the First National City Bank, and he is going to produce records relevant to the case.

The Government has subpoenaed some records from their Italian branch, and I believe, although I haven't discussed this witn Mr. MacDonald, he is going to attempt to show that they refused to comply with the subpoena because of Italian banking secrecy of some kind.

All of this I expect Mr. MacDonald is going to bring to the jury's attention with the hope of drawing what I regard as a impermissible inference that Mr. Leonard is exercising some control --

MR. MAC DONALD: I was tempted to put one of Mr. Bowman's associates on the stand to justify an opinion. I may as the witness what he knows about records in this file, in this country, but not --

MR. TIGUE: All right.

I believe, your Honor, there are some pending matters on 3500.

MR. MAC DONALD: The record should reflect that we provide some additional materials to Mr. Tigue last night.

THE COURT: Now, I have looked at the Government's bill of particulars, that is, a particuliarization of the indictment, and based upon the nature of the charges, as I see it, I am confirmed in what I observed last night. I see this charge as originating in and depending upon the showing of an omission.

Inasmuch as I have concluded that way I decline to turn over 3501, 2, 3, and 5.

Now, as far as Mr. Schulman's memorandum is concerned, on the record, before me I don't conclude that is a substantial verbatim statement of the witness Laski, and therefore I decline to turn that over.

Now, what else was open?

MR. TIGUE: The only thing, when I went over Mr. Laski's testimony I noticed that he did introduce one schedule from part of his work papers which related to income. I would certainly think with respect to the exhibits, your Honor, particularly the one that relates to 1967, if there are other items in there relating to the income, I would think I have a right to look at those.

THE COURT: Mr. MacDonald would know better than I.

MR. MAC DONALD: I can tell your Honor, that the bank statement of deposits was produced, and the only other

matters are excerpts from contracts, as I recall, of other firms with which Mr. Leonard had a contractual relationship as well as excerpts of invoices for such contracts. Those are different sources of income.

That is, I think, a fair summary of the income portions of the work papers.

By the way, Mr. Tigue has the bottom lines. There is a schedule which he has received, a pull-out schedule, which puts each of those contractual exhibits in the gross amounts and it confirmation books and the book amounts. He just doesn't have the work papers, the excerpted contractual portions.

MR. TIGUE: I was really going more to the point that there was put in evidence yesterday, a set of work papers which he obtained from Mr. Lescowicz, I believe, and I was wondering whether there were other materials which he obtained from Lescowicz relating to income.

THE COURT: Mr. MacDonald?

MR. MAC DONALD: I don't think there are any, and I will check the files before I begin.

(In open court, jury present.)

M O R TI M E R L A S K I resumed.

THE COURT: Good morning, ladies and gentlemen. Sorry to hold you as we did. We had matters of law that we have been earnestly at work on.

Mr. Tigue, go ahead.

THE CLERK: Mr. Laski, you are still under oath.

THE WITNESS: Yes.

CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. Laski, yesterday, you testified that you were a revenue agent, is that right?

A That's right.

Q But you were not acting as an ordinary revenue agent in this case, were you?

A Yes, I was.

Q Were you not part of an elite corps of Government agents assigned to a project called the Foreign Bank Account Project?

A If you mean as an elite corps that we were picked for our accounting techniques and accounting proficiency, to that extent we were elite.

Q You were part of the Foreign Bank Account Project, is that right?

A That was one of many projects and many duties and many audits that we had.

Q If you could answer my question yes or no, I would appreciate it.

A Yes.

Q You were a member of a Foreign Bank Account Project, were you not?

A Yes, I was.

Q And you had several fellow agents who were in that same project?

A Yes, I did.

Q About a dozen?

A About that.

Q You were all selected because of your proficiency as revenue agents, is that right?

A Yes.

Q How many cases were you assigned under the Foreign Bank Account Project?

A I believe I had ten.

Q Was Mr. Leonard's case number 21?

A I don't understand.

Q Was Mr. Leonard's case assigned a number under the project?

A That I don't know.

Q Let me show you Government's Exhibit 3501, which was provided to me by the Government pursuant to law.

If you will take a look at a page about mid-way through, which is entitled "Fraud Referral Report" at the top, tell us if that writing at the top refreshes your recollection as to whether or not Mr. Leonard's number was 21 in the project.

A The page says 21, I am not quite sure I saw this page. If I did, I don't remember the number, to be honest.

Q But the cases in the project were assigned numbers, were they not?

A I don't know.

Q How long were you in the project, Mr. Laski?

A From the summer of 1968 until I left for California in June of 1970.

Q During that period of time, you were assigned the Jackson Leonard case, were you not?

A That's right.

Q This program was given top priority, was it not?

THE COURT: I am going to sustain an objection to the form of the question. It is a characterization of a number of underlying facts.

MR. TIGUE: I will withdraw it, your Honor.

Q You were told, were you not, Mr. Laski, that this project was of top priority?

A I believe so.

Q And that there was a target date to complete it of January 31, 1969, is that right?

A Not really. We didn't have a target date in which we were told that cases had to be handed in, because we had constant delays.

As a matter of fact, I don't know what, if any, target date was eventually set on the cases.

Q Was the target date for the Leonard case originally established as January 31, 1969?

A It could be.

Q Let me show you Defendant's Exhibit E for identification.

If you will take a look at the second page, tell us if that refreshes your recollection as to when the target date was to complete the case.

A It says January 31, 1969, but I am not refreshed on it. It just wasn't that formal a program, to be honest. We were looking for audit techniques, and we just went from day to day with it.

Q You were not told that the Leonard case had to be completed by a target date of January 31, 1969?

MR. MAC DONALD: Objection. This is the third time the question has been put. It has been answered.

THE COURT: Sustained.

Q You said this was an ordinary program; is that what you just said?

A I said this was one of many programs.

Q Of the Foreign Bank Account Project?

A No, just one of many programs that we ran.

Q But this program was a pilot program, was it not?

A Yes, it was.

Q And you were put under pressure to complete the examination in a short period of time, were you not?

A No, I wasn't.

Q How many hours have you worked on the Jackson Leonard case, Mr. Laski?

A I would think by the time I left for California I would have somewhere between 250 and 300 hours.

Q Have you recently refreshed your recollection as to the number of hours you worked?

A No. I was able to find my time records for 1968, which I think had about 180 hours by 1968.

And then we tailed off timewise on that for 1969. I am assuming I had another hundred hours on it. But I haven't seen my own '69 records, we can't find those.

Q This project you were not permitted to discuss

even with your fellow IRS agents except on a "need to know" basis, isn't that right?

A That's right.

Q And the reason for the non-discussing with your fellow agents is because the Internal Revenue Service was spying on the United States mails of American citizens, isn't that right?

A That I don't know.

Q In this program, Mr. Laski, didn't you become one of the coordinators for the entire project?

A Towards the end of my stay in Manhattan, the project leader took ill, and I took over his group for a period of three months. And one of my duties was to watch it. But it was only as a very, very, very superficial caretaker. They knew I was going to California, and I just couldn't get involved. It was a grade level much above what I was. I was a grade 12 and that was a grade 14.

Q You were a coordinator, leader of this project at one time, were you not?

A Yes, but I am saying on a superficial level. Now, somebody was sitting there in case a phone call had to be made.

Q In your position as a coordinator it never came to your attention that there was a mail watch on Jackson

Leonard's mail and other people.

A In my position, I had heard that there was a mail watch. I personally never saw, never knew anything about it. It was not until I was a coordinator that I even heard about the mail watch. We were originally given cases, said, "Go out and audit them and try to develop techniques to uncover foreign bank accounts."

Normally, as an accounting process, we would do things, instead of just auditing receipts and disbursements, I would add to my audit, I would look at telephone bills, I would look at Western Union charges to see if there were any charges made to foreign countries; I would look at cancelled checks to see if there were any drawn to foreign countries. But that was the outer -most extend of the extra work that we were doing.

Q You were told that information had been developed from a confidential source?

A They didn't even go as far as that, sir.

Q Would you take a look at --

A They said that we have some information that the person has had some dealings with the foreign source, and they said, "Go out" -- and they didn't even tell us what year. We were not even told that.

Q You were told it was information from a confi-

dential source? That is my question.

A Right.

Q And you never asked your superiors what that was?

A They wouldn't tell us.

Q This program was coordinated with a special agent by the name of Hyman Boler, was it not?

A I believe so, and to the extent that I saw him once when he was introduced to us at our very first meeting. And I don't believe I ever saw Mr. Boler again.

Q Your instructions when you went out on the audit were to conceal from the taxpayer the fact that youhad any kind of information about a foreign bank account, is that right?

MR. MAC DONALD: I think an initial question, which is not leading, might elicit the form of the instructions, written or oral, and how they came about.

THE COURT: Yes.

Objection sustained as to form.

Q Will you take a look at Defendant's Exhibit E in front of you, sir?

A Yes.

Q Tell us if that refreshes your recollection with respect to the instructions you were given when you went out

on the audit, particularly the audit of Jackson Leonard.

A Not to the point that I could -- you know, if you wanted, I could read it.

Q No, no. You were given instructions, were you not, to not tell the taxpayer you had information about a foreign bank account.

MR. MAC DONALD: Let him ask, what were the instructions and in what form, written or oral.

MR. TIGUE: Your Honor, I think I should ask the questions.

THE COURT: I will overrule that objection.

A Yes, we were told not to disclose it; just to try to develop audit techniques.

Q Then your instructions were that if your audit didn't disclose this, that you would have to carefully question the taxpayer; is that right?

A If you take it in its proper context. There was a year and a half later that further instructions came down, or a year later that instructions came down. Initially we were told, "Go out and do an audit and see if you can uncover by adding an analysis of telephone bills" -- as I said before, sir.

Q Well, when you had this conversation, you claim you had with Mr. Leonard, you were told to go do that by

your project leader or your superior in this project, is that right?

A I was told to confront the taxpayer and ask him if he had a foreign bank account.

Q Well, the answer to that question is yes.

A Yes.

MR. MAC DONALD: The same question. It was answered. I think there is no need to repeat it.

THE COURT: All right.

Q At the conclusion of the Leonard case, did you file what is called an examination in summary form?

A May I refresh myself by saying: Is that the monthly status reports?

Q No, I will get that in a second. But if you take a look at defendant's E in front of you, towards the bottom of the first page, perhaps that will refresh your recollection.

A I really don't remember. There was the monthly status reports that I remember. If I could be shown what this form is, it might refresh my recollection.

Q I don't have any, but I don't recall having prepared any.

A I don't think so.

Q You prepared monthly status reports, did you not?

A Yes.

Q And one for each month from the time you began the Leonard audit?

A Yes, we did.

Q Can you tell us where they are, sir?

A God only knows. I have a feeling that the project -- well, I know that the project was more or less abandoned, and I went back personally in October and did a search of the branch where we kept the forms.

That branch, because of lack of manpowder, had been disbanned in 1970 and merged into other branches. And a lot of the files just got tossed out, I'm afraid.

Q You looked and you were unable to find one.

A Right. We went all through branch 1, which was on the 13th floor. I think we found one of another agent's but I couldn't find any of our own.

Q Did you ever confront Jackson Leonard with any letters that were ever in your possession?

A No, I did not.

Q Was Mr. J. Rothstein the original agent to whom the Leonard case was assigned?

A I've heard that name. I think it was attached to the 1965 return or 1966 return. There was an agent in 1965, Rothstein; there was an agent on the other year, I

believe, Laskowitz. When the case was assigned to me, I naturally picked up both years.

Q So you had been assigned 1965 to look into, and then --

A And then I picked up -- 1966 first, and then I found out there was an open year in someone else's hand.

Q So it would be 1965?

A I believe so.

Q And then you also picked up 1967, is that right?

A Right. That's normal.

Q Did there come a time when you picked up 1968 as well?

A No.

Q Was there an agent by the name of Tragna who was part of your project?

A I don't believe so. I don't believe that Mr. Tragna was part of the project initially.

Q He became a member later on.

A No. It may be, It may not be. I left in June of 1970, and I'll say as of June 1970, I don't think that he was working on any cases in it. If he was, then it's beyond my knowledge, or remembrance, I should say. I really don't think he was.

Q When you left the case, you reassigned to another

agent, did you not?

A Yes, I did.

Q What was his name, please?

A Bernard Singer.

Q And you had a case for what, the last two months of 1968, all of 1969?

A And six months of '70.

Q And six months of 1970. Is that right?

A Yes.

Q So you were on the case just two months under two years, is that right?

A Right.

Q Before you walked into Mr. Lescowicz's office or Mr. Leonard's office, you had taken a look at Mr. Leonard's prior history with the Internal Revenue Service, did you not?

A Do you mean that we received a revenue agent's report?

Q Tell us what you did before you started.

A Well, whenever we receive a case, we usually receive a copy of work papers of what a prior agent has done, at least the report part, that tells you any of the adjustments that were made.

In Mr. Leonard's case, I believe a few of his

prior years were being decided by the Appellate Division on a technical matter, and they had to be reviewed, because whatever the results were they affected the current year.

Q So you looked at the Revenue Agent's Report to the prior years?

A I think at that instance all we had was the Appellate -- possibly the revenue agents, but I think I was more concerned with the Appellate because that was the final decision.

Q During the course of your audit, you learned, did you not, that Mr. Leonard filed a petition in the Tax Court for those years?

A Yes, I believe he did.

Q It is you, Mr. Laski, is it not, who recommended that Jackson Leonard be referred to a Special Agent for a fraud investigation, is that right?

A Yes, I think it was.

Q You gave some information to Mr. Singer to put in what is called the fraud referral report, right?

A Yes.

Q When you talked to Mr. Leskowicz for the first time, did you give him any warning with respect to whether ornot he had to answer any of your questions?

A No, I did not.

Q And when you did --

MR. MAC DONALD: Is this Leskowicz, the accountant?

MR. TIGUE: The accountant.

MR. MAC DONALD: I am not sure I know why the accountant is -- withdrawn.

Q With respect to Mr. Leonard, in this conversation you claim you had in March of 1969, did you give him any warning?

A No, I did not.

Q Now, I would like to talk to you for a minute, if I may, about the documents you requested. I believe yesterday you testified that -- let me withdraw that.

When did the actual audit begin of Mr. Leonard?

A I believe the actual audit began either in October or November of 1968.

Q Do you recall giving some testimony at a prior proceeding in this courthouse relating to this case?

A Yes.

Q Do you recall saying that the audit began on November 8, 1968?

A Yes. I think at that time I was refreshed by my activity record.

Q As a matter of fact, the audit actually began

on November 4, did it not?

A I thought it was November 8.

Q Would it help if you took a look at your activity report?

A If it says November 4, November 4.

MR. TIGUE: I wonder, your Honor, if I might have the original. These copies are not as clear as they could be, and I don't think it is among 3501 in any case, although I have been given a copy.

(Papers handed to the witness by Mr. MacDonald.)

MR. MAC DONALD: The page bears the number 592.

THE WITNESS: Yes, the first appointment was November 4, the second was November 8.

Q It is your usual practice when you begin an audit not to just ask for specific matters, is that correct? You ask for general substantiation relating to various areas in which you are interested, is that correct?

A Yes, that is true.

Q And it is true that you never limit your request to specific items like the contract, is that correct?

A I will hedge and say yes. I don't know what you --

Q Let me ask you:

In a prior proceeding, did you give the following

answers to the following questions by Mr. MacDonald:

"In your request of Mr. Lefkowitz" -- which I believe is really Leskowicz -- "for documentation in respect to those deposits, would you describe whether that request was limited to contracts or give us your best recollection of the request you made?

"Answer:" The witness, which is you -- "During the analysis of deposits my normal routine would be to grab the most obvious information first, which would have been a request for contracts, but I never limit my request. I would have asked for the contracts plus anything else that would go along with it which would have included any invoices, bills, anything you could think of. I would take a shotgun approach towards my receipts."

A Right.

Q You gave that answer, did you not?

A Especially when the records were inadequate.

MR. TIGUE: I move to strike that.

THE COURT: Yes.

Q You told us yesterday in answer to Mr. MacDonald's question that he showed you a number of Government exhibits, which is 75, a letter between Union Carbide and Mr. Leonard, and the various invoices and what not.

Did you ask for those documents as well, sir?

A I asked for all documents. I couldn't have asked for the invoices specifically, because I did not know which specific invoices there were.

I requested of Mr. Leskowicz all receipts and all invoices.

Q You did that at the beginning of the audit?

A I did it more than once.

Q Could you tell us what documents you asked for when the audit began?

A Well, the first thing I request -- and I requested it here -- was the taxpayer's books and records. And from there I make my second request.

Q When was your first request, the contracts relating to the years you were auditing?

A It would have been shortly after I analyzed the bank statements, which would have been on the first or second visit.

Q Let me show you Defendant's Exhibit F for identification.

Tell us if you recognize this document, sir.

A Yes. This is my handwriting.

MR. TIGUE: I offer it in evidence, your Honor.

A Almost all of it is my handwriting.

Q Which part is not?

A The dates where it says "Contract re fees," that 1965 to 1967 is not mine.

Q That is not your handwriting?

A And where it says "Cratter Countywide Realty," that is not mine either.

MR. MAC DONALD: I have no objection.

THE COURT: It may be received.

xx (Defendant's Exhibit F received in evidence.)

MR. TIGUE: Your Honor, may I distribute copies to the jury?

THE COURT: Let me see it, please.

Why don't you read it, Mr. Tique, rather than distribute copies, and then you can go on with your examination.

MR. TIGUE: Thank you, your Honor. This, ladies and gentlemen, is a shorthand written note which says in the upper-righthand corner, "M. Laski."

Q That's your handwriting, is it not, Mr. Laski?

A Yes.

Q Then appears November 4, 1968. That is the first date you were on the audit, is that correct?

A Yes.

Q And then the name "Leonard" appears. That is the case you were working on, is that right?

A Right.

Q On the first line you wrote down the documents that you wanted and you gave it to Mr. Leskowicz, did you not?

A That is not all.

Q Just a minute, Mr. Laski. We will get to that. You wrote this memo out, did you not?

THE COURT: Mr. Tigue, at this point just read the memo, please. Then you may go and examine further.

MR. TIGUE: All right.

(Mr. Tigue read from Defendant's Exhibit F.)

Q The next line says, "Re" Sold." Can you make out the next word, Mr. Laski?

A "Re: Sold Nat. Equity Stock, 4/13/65, schedule tax loss carry forward."

Q And then the language that appears toward the bottom, it says "Cratter." Is that your handwriting?

A No, it is not.

Q So the first day on the audit you went into Mr. Leskowicz's office and you wrote this piece of paper and you gave it to him and you said, "These are the documents I would like," did you not?

A I would have left this with him at the end of the day.

Q Mr. Leskowicz complied with your request, did he not?

A Yes, he did.

Q He gave you the documents that you asked for.

A Yes, he did.

Q Is it your testimony that you said that that was insufficient, that you wanted some invoices?

A Yes, it was.

Q Did he ever produce any invoices?

A Yes, he did.

Q Did you make copies of them?

A I did not -- not photocopies. I took notes of them,

Q Did that include the invoices for the Union Carbide Corporation?

A No, it did not.

Q Did you ask him for those?

A Yes, I did.

Q What did Mr. Leskowicz say to you?

A He said he had not prepared the return or requested them of the taxpayer.

Q Did you follow up that request and say to Mr. Leskowicz that you insisted on having those?

A Yes, I did.

Q Did you make any notes of that in your work papers?

A It wasn't necessary. I requested them daily.

Q No, no. Yes or no. Did you make any notes?

A The note that I made I would give to Mr. Leskowicz. I gave him many, many, many sheets like this.

Q There are other notes, would say, that you want the invoices from Union Carbide?

A Among other people.

Q You gave that to Mr. Leskowicz, is that right?

A I did.

Q Would there be a note also for check stubs which Mr. MacDonald mentioned in your direct testimony yesterday?

A A note for check stubs or the checks themselves.

Q Under the terms of the Union Carbide contract Mr. Leonard was to receive some money, was he not?

A Right.

Q And he would not have the checks, they would go back to Union Carbide, would they not?

A Well, the stubs, that is the part that is left in the book after you rip out the check.

Q Mr. MacDonald asked you yesterday were you ever shown any stubs from a check for Union Carbide?

A I was shown the check from Union Carbide. I am

sorry if I am not complying, I don't understand.

Q From Mr. Leskowicz, I believe Mr. MacDonald asked you were stubs for a check from Union Carbide ever exhibited to you? I will find it in our testimony.

MR. MAC DONALD: Maybe it will help if we use a different expression. Remittance, half of a check, bottom half.

A The remittance part of a check, yes.

Q You asked him for that?

A I would assume I did or else he wouldn't have shown it to me.

MR. TIGUE: I ask to strike that. We don't have assumptions. The record is what counts, I believe; what happened.

THE COURT: Strike it out at this time.

Ladies and gentlemen, may I say when evidence is stricken by me from the record, you are to completely disregard it. We are all human beings, and you have heard it. To the extent that it is humanly possible for each and every one of you to put out of your mind anything that is stricken, to do so, and in any event, you are not to give it any consideration. Because it is not evidence, it is not properly before you.

Go ahead, Mr. Tigue.

MR. TIGUE: Thank you, your Honor.

Q Is it your testimony, Mr. Laski, that the only thing that was shown to you regarding Union Carbide was one copy of one contract?

A Yes.

Q You are an attorney, are you not?

A Now I am.

Q And you were a CPA at that time, were you?

A No, I wasn't.

Q When did you become a CPA?

A In 1970.

Q And you have been in private practice before you came with the Internal Revenue Service?

A I worked for an accounting firm.

Q In the course of your experience, isn't it normal to have a correspondence file which would relate to a contract of this size?

A Certainly.

Q Did you ever ask to see that correspondence file?

A Certainly.

Q And it was refused to you?

A Mr. Leskowicz would constantly say, "I did not prepare the return. I will ask the taxman."

If you know my activity record, sir, you will see that there was a lot of activity in the early months, and then there would be a tremendous amount of delay trying to get information from Mr. Leskowicz.

He would constantly say, "Mr. Leonard is very busy." And I would sit and wait and work on other cases waiting for this information to come in.

Q And you waited for almost two years for the correspondence file to come?

A No, we had the confrontation with Mr. Leonard in March of 1969.

Q And in that confrontation you asked Mr. Leonard for correspondence files?

A No, I didn't have to. I asked him directly about the payments.

Q Did you ask him for the correspondence file? Please answer yes or no, if you can, sir.

A I didn't ask Mr. Leonard for the correspondence file.

Q Did you ask him for the invoices?

A I didn't ask Mr. Leonard for the invoices.

Q Did you ask him for any additional documents?

A I asked him about the payments.

Q Did you ask for any additional documents?

A No, I didn't.

Q Now, this is in March, sometime, is that right?

A Yes, that's right.

Q And Mr. Leskowicz had horsed you around for five months at that time?

A I wouldn't say he horsed me around. He had his tax season, and he was busy, and it is normal. We under-

stand the taxpayer's problem and we wait for records. Especially in the tax season, it's quite common.

Q You never asked Jackson Leonard for a single piece of paper, did you?

A Not Jackson Leonard.

Q During the course of your audit, no one refused the contract which you had requested, is that correct?

A No.

Q And do you have any indications in your work papers where you requested documentation of Mr. Leskowicz and it was either complied with or not complied with?

A I would assume indirectly -- forget the "I assume" -- indirectly I would not have written that I requested this of Mr. Leskowicz and this was refused. I would have written "This was requested", or little notes there that would remind me that it was requested.

Q Where are those notes, sir?

A In my work papers, I presume.

Q You say you presume. Do you know if you have any notes in your work papers, sir?

A Those that I have been refreshed with and I was, I have those. Like on this particular contract where we didn't receive the payments, I wrote down the months where the payments were not received, and what I wrote down indi-

cated that they were still outstanding, and that would have meant that the request wasn't complied with.

Q You looked at some work papers before you testified?

A Yes.

Q And did you see any handwritten notes of requests that weren't complied with?

A Only to the extent that they were my notes which reminded me.

Q You do have notes which you say in substance requested of Leskowicz the following --

A No. It would say "November and December," and that would indicate to me in my schedule of deposits that they were outstanding, and I am still requesting them, and until it would be filled in with a narrative next to it, I would be constantly reminded that I didn't have that information.

Q Are you referring to the work papers that were introduced in evidence during your testimony?

A I believe it's on the deposits to the Franklin National Bank, the one that I am referring to specifically.

MR. TIGUE: May I have Government's Exhibit 76, please?

Q As a matter of fact, you don't have a bank account for the Franklin National Bank, do you?

A I don't.

Q Not you. You don't have one for Mr. Leonard?

Q First National City.

Q Didn't you just say Franklin National?

A I am sorry. I meant First National City. I was referring to my schedule of deposits in this account.

Q A schedule of deposits in the account. Was that introduced yesterday?

MR. MAC DONALD: It's 02 of 3501, the third page in, I think.

Q Do you have 3501 before you, sir?

A Yes. It's not that page.

Q It's not that page. Will you tell us where you have any notes that you asked Mr. Leskowicz for any documents that he didn't provide to you?

A If I may refer to this, it's document 00379.

Q Can you show it to me?

I will offer it in evidence and everybody can see it.

A That would indicate to me --

Q Excuse me. May I see that for a second.

You are referring to Government's Exhibit 3501 and a page entitled "Leonard, 1966"?

A Yes.

MR. MAC DONALD: No objection.

MR. TIGUE: Let me see what it says.

Q Now, would you indicate on the page for 1966, entitled "Leonard" whether it is indicated that you asked for documents?

A Well, this note would indicate to me that I did request that.

Q Which document is that, sir.

A This is from the Structural Electrical Line account, and the note I wrote myself here, "Where did Leonard draw $25,000 and $3,000 to pay Catalytic Construction Company and 25"--

Q No. My question is:

That doesn't have anything to do with Union Carbide?

A No. You asked me where I requested any documents from Mr. Leonard. I would have these notes all throughout here.

Q Do you have any note anywhere where it says, in substance, in your shorthand or longhand form, you asked for Union Carbide documents and they were or were not given to you, either way?

A To the best of my recollection, from what I have seen, I have not seen a formal or informal request of docu-

ments from Mr. Leskowicz. They were oral. They were in this note form, sir.

Q Could you tell us what you looked at to refresh your recollection before you did testify?

A Well, I was given certain work papers, which I would assume this computes it.

Q Well, during the course of your audit, you generated a great many work papers, did you not?

A Yes, I did.

Q Did you review those before you testified?

A No, I didn't.

Q You reviewed what is essentially Government's Exhibit 3501?

A Yes, sir.

Q And nothing else?

A This -- I would believe this would have executed it, plus the activity record, and I think these two papers. There may have been some more papers.

Q Could you tell us just generally in 1968, how many days you worked on the Leonard investigation?

A Should I give it to you from here?

Q Yes, or from your recollection, either one?

A I showed 24 days that I was in the field, which would mean that I had been up at Mr. Leskowicz's office

in 1968. There may have been more time put in where I was sitting at my desk doing research, where I wouldn't have put it on this activity record.

MR. TIGUE: Your Honor, I would offer in evidence -- well, let me see. I have to separately mark it. Well, maybe I can mark your original request.

I would like to mark as Defendant's Exhibit G, the activity report to which Mr. --

MR. MAC DONALD: No objection.

(Defendant's Exhibit G received in evidence.)

Q And during the year 1969, you worked on it on various days as well, didn't you?

A Yes, I did.

Q Could you give us a general number of days --

A Excuse me. I am sorry. When I counted the days I gave you six days that were part of 1969. So it would have been 18 days in 1968 and six in 1969.

Q So the activity report, which is Defendant's Exhibit G, records the trips out of the office where you worked on the Leonard case, is that right?

A Yes.

Q Could you read for us, please, just the dates in the lefthand column, because I believe yours is in pencil and it is not very clear. Just the dates for 1969,

please.

A January 8, 9 and 10, February 4th and March 17th and 18th.

Q Was one of those two days when you spoke to Mr. Leonard about the Union Carbide business and the Swiss Bank account business?

A To the best of my recollection, it would have been one of those two days in March.

MR. TIGUE: May I have Government's Exhibit 89, please, which I believe is Mr. Laski's work paper that was referred to yesterday.

Q Would you just take a look at this for a minute, Mr. Laski, while I clear away some of the documents here.

Just so we all know what this is, this is a work paper which you generated when you looked at the Union Carbide contract, is that right?

A Yes, it is.

Q And the person you asked for the contract was Mr. Leskowicz, is that right?

A Yes.

Q The person who gave it to you was Mr. Leskowicz, is that right?

A Yes.

Q I believe yesterday in your direct testimony,

you said that the contract itself was a large, bulky contract, between 12 and 15 pages, is that right?

A Yes.

Q As a matter of fact, it was about 55 pages, is that right?

A The part that I was given was 12 to 15 pages.

Q Oh, you were only given part of the contract.

A If there was more, I don't know.

Q I believe yesterday you identified the Government's Exhibit 66, a copy of which I have here -- let me give you the original.

Didn't you testify yesterday that Government's Exhibit 66 was the document that was given to you?

A Yes, it was.

Q And that is considerably more than 12 or 15 pages, is that right?

A It's 44 to be exact.

Q And there were some appendages to that?

A No.

Q Were you given the appendages which are referred to in the contract?

A No.

Q You are sure of that?

A As sure as I am that I was given 15 pages.

Q Take a look at Exhibit 86, if you will. This is the page with line-outs and initials in the margin, is that right?

A Yes.

Q And it is your contention or is it your recollection that there were no initials in the margin when you looked at it, is that right?

A Yes.

Q You are sure of that?

A Yes.

Q You are certain?

A Yes.

Q And could you tell us how it is you recall that, sir?

A Out of all the contracts I looked at, this was the one that was giving me the most difficulty. From my analysis of the deposits there was supposed to be as part of this contract, ten payments of $37,000 each.

When I got to this contract I looked at the clauses which called for the $37,000, ten payments. There was no markings against it. It was left absolutely blank, just as if the contract were an original.

Q Those were the other provisions, right?

A Yes, then we got to 3(e). This was the provision

that called for a ten percent override. This had a line through it, and it wasn't initialed. Then you went to other pages in the contract and you saw they were lined-out with initials.

And I asked Mr. Leonard, "How can you tell or what evidence is there that these were changed?"

Q We will get to the conversation in a minute.

My question was concise --

MR. MAC DONALD: The question was, how did you remember that fact? And the witness was explaining.

THE WITNESS: That's how it happened.

THE COURT: Has it been answered? Mr. Laski, have you answered how you remembered?

THE WITNESS: It was the interrelation of those various things.

Q This was just one of many contracts which was given to you, is that right?

A Yes.

Q You have to answer so the reporter can hear you.

A Yes, it was.

Q And you looked at it sometime around November of 1968?

A Yes.

Q And we are now in January of 1975.

A Yes.

Q And you have a clear present recollection of what you saw?

A I have a clear present recollection of that and other contracts that I looked at.

Q And you aren't testifying here about the initials in or out based on your work paper. You are testifying based on your memory, is that right?

A On this point, yes.

Q And your work paper doesn't say anything about initials, is that right?

A That's right. It just says crossed out.

Q Aren't you therefore concluding or reconstructing that they must not have been there but you don't have any recollection?

A I don't remember precisely that there were no initials there.

Q Now, do you remember yesterday Mr. MacDonald asked you to read the last three ines of sub-section (e)?

A Yes.

Q And you said you couldn't do that, is that right?

A That's right.

Q Because you can't make out what's on there.

A No, I can't.

Q Now, you can?

A When I had this contract, I was able to. It was crossed out, but I was able to read what was underneath.

Q When you were on the stand yesterday you couldn't read what was on there; is that right?

A That's right, sir.

Q And if you look carefully at this you can't see that it says "Plus a fee of 10 percent" and then a 10%" -- of said amounts to cover contractor's cost of processing and handling subcontracts for the work"?

You don't read that, sir?

A The first four or five words are very difficult for me. I can see the 10 per cent. I could see "said amounts to cover contractor's cost of processing and handling subcontractors for the work."

Whatever the first four or five words are --

Q You can't make out the words that say "plus a fee of 10 percent"?

A If you ask me, I can imagine that I can read it. Why read it.

Q When you looked at Government's Exhibit 86 for the first time, there weren't any holes in that paper from A to Z, is that right?

A Pardon?

Q Other than a staple hole in the righthand corner, if you look carefully at Government's Exhibit 86, if you look at page 6, in the ink, you will see numerous holes there, is that right?

A I am sorry. I don't follow you.

Q Are you on page 6, Mr. Laski?

A Holes?

Q If you just hold it up to the light.

A Oh, you mean over here.

Q You will see along the whole line, if you hold it up to the light.

A Oh, yes.

Q Did you notice any holes when the contract was given to you for the first time?

A No, I didn't.

Q So you don't know whether they were in there or not?

A They are pinpoints.

Q Yes, I know. But you don't really remember whether they were in there or not, do you?

A No, I don't remember if there were holes in the paper.

Q When the contract was given to you, you wrote

down verbatim what was written in the last three lines of sub-paragraph (e), is that right?

A Yes, I did.

Q Now, the audit that you conducted, except for this meeting that you testified about that you had with Mr. Leonard, was conducted in two places:

Either in Mr. Leskowicz's office or in your office, is that correct?

A Plus the meeting that we had --

Q Yes. I said, other than that meeting.

A Yes. In Mr. Leskowicz's office and my office.

MR. TIGUE: Now, I wonder if I might see Government's Exhibit 67 for identification.

Q Now, would you take a look at 67, sir, and tell us whether or not you have ever seen that in your life, that copy?

A No. I didn't see this copy.

Q And if you look through there, you will notice with respect to the price, which starts on page 4, that there are obliterations for the amounts paid, is that right?

A That's right.

Q And that information was never concealed from you, was it?

A No, it wasn't.

Q The contract that was given to you had all of those amounts clearly unaltered, unlined; is that right?

MR. MACDONALD: This is page 4.

Q Starting page 4, page 5 and page 6, is that right?

A These figures were not hidden from me that are crossed out on this copy.

Q The copy that you had had all the information in it with the one exception of 3(e), is that correct?

A Yes, 3(e).

Q And if you look at page 6 of the copy before you, this business about the 10 percent override is unchanged in any way, is that correct?

A That's right.

Q Did you in the course of your audit ever meet a man by the name of Robert Lipsit, an employee of Mr. Leonard's?

A No, I didn't.

Q Have you ever met him?

A No; I didn't.

Q Do you know -- can you make out the language which is at the top of Government's Exhibit 67, the hand-writing at the top, can you identify it for us, please?

A "Bo"-- I don't know what that is.

MR. TIGUE: It says, "B Bo" and there's another word that is torn, "for your info", and there are some initials at the bottom, "J.D.L."

Do you know whether or not "Bo" is Bob or Robert Lipsit?

A No, I don't.

Q Now, you knew that the Union Carbide contract provided for not one plant but two plants, is that right?

A Yes, I did.

Q And when you took careful notes of the contract you made note that there was a plant in Taft and there was also one for South Charleston, is that right?

A Yes.

Q Did it come to your attention that the South Charleston plant had been cancelled?

A Not that I recall.

Q Did you ever discuss that with Mr. Leonard?

A No, no; I didn't.

Q You did not.

So you were ignorant of that fact, if it was a fact, when you talked to Mr. Leonard on March 17th or 18th, 1969?

A Yes, I was.

Q And Mr. MacDonald asked you yesterday if you had seen Government's Exhibit 75, which is in evidence, during the course of your audit, and you testified you did not, is that right?

A That's right.

Q So when you had the discussion you claim you had with Mr. Leonard, there was no distinction made between Taft on the one hand and South Charleston on the other hand, was there?

A No.

Q And when you first saw Government's Exhibit 66 for identification -- that's the contract that was given to you -- it was indicated at the top that that was a conformed copy, was it not?

A Yes.

Q And you knew it wasn't an original, because the signatures didn't appear on the sixth page, is that correct?

A I didn't check back to the sixth page itself.

Q You took careful note whether there was initials or not in the margin, didn't you?

A Right, because some clauses --

Q Just a minute, didn't you?

A Yes, I did.

Q And you never looked at the last page where the people who signed the contract put their names, did you?

A No. The contract was in effect, I assumed.

Q And you were a law student at the time, weren't you?

A Yes, I was.

Q As a matter of fact, a few months after you had this meeting you claim you had with Mr. Leonard, you graduated law school, didn't you?

A Yes, I did.

Q And you had no interest in whether or not the contract was actually signed, is that correct?

A If you would check my marks you would find I wasn't the best of law students.

Q Did you have a course in contracts in law school?

A That would be one of the courses that would indicate I wasn't the best of law students.

Q And did you know the consequences of signing or not signing a contract?

A Certainly.

Q Now, when this contract was given to you by Mr. Leskowicz, did you make any copies of the contract?

A No, I didn't.

Q And when you saw that contract during the course

of the audit and then you went out to sunny California, when was the next time you saw the contract in your life, Government's Exhibit 66?

A Just prior to the -- just prior to the trial, I believe.

Q And in all those intervening years, you have not seen that contract at all?

A No, I haven't.

Q And yourrecollection you say is very clear as to what was on the contract and what was not on it?

A As to those initials, yes.

Q But not as to the signature?

A No. I didn't look at the signature.

Q And the audit that you began started some six months and three months ago from today, is that correct?

A Yes, and this was the last case that I reviewed before I left.

Q Now, I believe yesterday you mentioned in your direct testimony that this contract was the issue in this case, is that right?

A Was one of the issues in this case.

Q Yesterday you say it was the issue in this case, didn't you?

A If I did, it's one of it. There were many issues

in this case. This is one of the most important.

Q Mr. Laski, do you remember what you said yesterday?

A Yes. I said this was the issue.

Q And you are generally familiar with the charges in this case, aren't you?

A More or less. I didn't go over that with Mr. MacDonald.

Q Well, how did you know what the issues in the case are?

A This was the issue in my case. This was my income tax case when I was working on it.

Q So it is your testimony that you were not aware of the charges in this case?

A No --

THE COURT: No, that isn't his testimony, Mr. Tigue. He gave an answer about three answers back.

May we have it read, please.

(Record read.)

Q You are aware, aren't you, that one of the years in question is 1968?

A I think so. I stopped my work, as you know, in 1967. I didn't do anything in 1968.

Q You did nothing whatever with respect to the year

1968?

A Only to the extent that any of my work papers may relate in some respect to a later year. I concentrated my efforts on '65, '6 and '7.

Q And when you had this conversation you had claim you had with Mr. Leonard, in fact, his 1968 income tax return had not even been filed, is that right?

A I don't think it was.

Q Incidentally, do you recognize Mr. Leonard in court?

A Yes, I do.

Q And does he look the same today as he did six years ago?

A No; he doesn't.

Q And did you ever tell anyone that the contract, Government's Exhibit 66, was exhibited to you in May or thereabouts, 1970?

A I don't believe so.

Q Did you ever tell anyone that you got the contract any other time than 1968 or 1969?

A I don't believe so.

Q Now, during the course of your audit, did you determine that the fixed amount of money set forth in the Union Carbide contract was reported in to to on Mr. Leonard's

income tax return?

A Would you repeat that, please.

MR. TIGUE: May the question be read?

THE COURT: Yes.

(Question read.)

A No, I didn't.

Q You determined that the amount of $50,000, the first payment on the contract, was reported.

A I think you should clarify for me what you mean by this -- reported --

Q Well, let's look at the contract. Do you have Exhibit 66 before you?

A Yes, I have it.

I think it's page 4 you are looking for.

Q Yes, if you start on page 4 you will see the first payment due was $50,000. That was reported on Mr. Leonard's tax return, is that right?

A Yes.

Q And then there's a payment of $130,000 which is listed on page 5.

A Yes, that was reported.

Q And then there are $37,000 a month for ten months, is that right?

A That's right.

Q And all that was reported, is that right?

A No.

Q It wasn't. What wasn't reported?

A Well, I remember that there were, I believe, seven payments, of which I only found four in checking the bank deposits for First National City.

Q And did you look into the year 1968 to determine whether or not --

A No, I didn't look at it.

Q So to this date you don't know whether or not these other payments were reported?

A No; I don't.

THE COURT: Mr. Tigue, are you going on to another subject?

MR. TIGUE: Yes; I am.

THE COURT: All right.

We will take our mid-morning recess.

(Recess.)

Q Mr. Laski, do you have any difficulty remembering some of the things which happened back in 1968?

A Yes, I do.

Q Let me show you Government's Exhibits 4, 5 and 6, which are checks from Union Carbide for $1,000, $10,000, and $1,000. I specifically direct your attention to Government's Exhibit 5, which is the middle check for $10,000. You have seen that check before, have you not, sir?

A Yes, I have.

Q You received these checks, did you not, from the Union Carbide Corporation in 1969?

A I think it was late in '69. It's a little difficult to pinpoint the date I received these checks from Union Carbide.

Q Let me show you Defendant's Exhibit H for identification, and just to help your memory to be refreshed on that matter. Will you take a look at that, please. That is the letter of 1969, October 9, from Union Carbide to IRS.

A This letter is dated October 9, 1969, but if you would allow me a moment I would tell you why it would be difficult for me to remember the exact date.

Q Oh, I am not asking that.

A Or even 1969, whether it was October or November.

Q All right, tell us what you want to tell us.

A At that point I was assigned to sit in as the group supervisor, that went to Washington in a training group. And a lot of my work, I had many cases besides this case, went fallow, laid by the wayside, while I was working in this capacity with this training group. So my mail may have accumulated and I may have seen it in October, in November or in December. Unfortunately, we were very, very, very busy at that time.

To that extent I am sorry I can't pinpoint more accurately when I received this.

MR. MacDONALD: Can we identify Exhibit H as a letter from some person to some person?

THE COURT: Yes.

MR. TIGUE: There is handwriting -- I don't want to offer it -- but it is a letter which was given to me by Mr. MacDonald, dated October 9, 1969. It is from Union Carbide. It is addressed to a Mr. Fitzgerald at the IRS, but there are some initials.

MR. MacDONALD: If we can be more precise, it was marked yesterday as Government's Exhibit 86, it is signed by Czajkowski. Czajkowski authenticated it as its own. It was over your objection that we removed it at that time.

MR. TIGUE: You can make your argument to the jury

at the end of the case, but I think I showed it to him for the purpose of refreshing his recollection, and I think he gave us an answer.

MR. MacDONALD: All right. It certainly is not fair to Mr. Czajkowski, who is not here, to -- we object, unless Mr. Tigue is withdrawing his objection --

MR. TIGUE: I don't have an objection. What are you talking about? I am asking the questions.

MR. MacDONALD: -- to the introduction of that document into evidence by the insertion of it at this point as a defense exhibit.

MR. TIGUE: I am not inserting anything, your Honor. I gave it to the witness to refresh his recollection. He told us what his best recollection is, I believe.

THE COURT: Go ahead.

Q You gave some information to Mr. Singer to put in what is called a Fraud Referral Report, did you not?

A Yes, I did.

Q That is essentially a document which kicks off an investigation by the special agent, is it not?

A Yes, it is.

Q One of the matters which you gave to Mr. Singer was related to Government's Exhibit 5, a check for $10,000; is that right?

A That is right.

Q You told Mr. Singer in essence that that was deposited into a bank account of Mr. Leonard's which had been undisclosed to you; is that right?

A No, I don't believe those were the words. If I may, I believe this was the last day that I was in the district, and I finally got together with Mr. Singer, who was going to get the case, and we sat the better part of the day discussing the case, because there were so many work papers it's only fair to fill the next agent in on what had happened.

And I believe I had told Mr. Singer that we received the check; that on the back it was stamped another bank than I had analyzed.

At that point I couldn't definitely say to Mr. Singer that there was an account or there wasn't.

Q Until this very day you cannot tell, is that correct?

A No, I can't.

Q As a matter of fact, on the 1966 tax return for Mr. Leonard there was an item of miscellaneous income of $15,000, was there not?

A There may be. I don't remember.

Q Would you take a look at 3501 before you, sir,

and I will show you my copy.

A I don't have anything here.

Q I will mark mine Defendant's Exhibit I for identification.

MR. TIGUE: If I may, your Honor, I will submit one later without my handwriting on it.

Q For the moment, Mr. Laski, would you take a look at Defendant's Exhibit I as it relates to the amount of money in the middle. Just take a look at that and tell us if it refreshes your recollection whether or not on Leonard's return for 1966 there was a miscellaneous income item of $15,000.

A My recollection is not refreshed, but my work papers, which I did, say that there was a miescellaneous income item of $15,000.

Q Did you ever determine, Mr. Laski -- would you like to look some more?

A Oh, I am sorry.

Q Did you ever determine whether or not the $15,000 was part of the $12,000 of Union Carbide check?

A I don't remember that now.

Q Union Carbide sent you a letter setting forth the amount of money which was paid to the Leonard Process Company under the terms of the contract we have been discussing;

is that right?

A Yes, they do.

Q And some of those, or those payments really were Government's Exhibits 20, 22, 18, 16, 14, 12, and 11, for the odd amounts. Were they not, sir?

A These are the checks?

Q Yes, the checks are before you. Will you take a look at those checks, if those are the ones that you received from Union Carbide?

A Yes, these are the checks that were received from Union Carbide.

Q And those checks were all in odd amounts, are they not?

A Yes, they wre.

Q If you look at the reverse, you will see that they bear the stamp of Treadwell Corporation, is that right?

A Yes, they do.

Q When you gave the information to Mr. Singer, did you tell him that that was money which was received under subparagraph 3(e) of the contract to Union Carbide?

A I don't believe so. I think my belief when I spoke to Mr. Singer was that these were amounts, as we already said, I didn't know they were deposited in another year, if they were. I just thought these were amounts that

were excluded from income. I hadn't taken it to the point to see if they were from Treadwell and payments back. I hadn't gone that far.

Q Bear in mind we are talking about the odd amounts. I have the even amounts, which we will get to in a moment. I have the odd amounts, and to refresh your recollection on this matter, please take a look at Government's Exhibit 66, which was shown to you some six years ago, and take a look at the portion of (e) which is not crossed out and tell us if that refreshes your recollection as to whether or not you told Mr. Singer that the checks I have just identified were made pursuant to that contract.

A I really don't remember if this is my words that I said to him.

Q At that point in time it was your impression that that was all income to Leonard Process Company; is that right?

A Right. I hadn't worked on this case or did work on it after receiving those checks. The checks had come in in the normal course of business. I had other things which if anything shows that this is a case. And when I gave them to Mr. Singer, I gave him what I thought was my impression at the time, that this was just unreported income.

Q You had no knowledge whether or not those moneys

were transferred in toto over to Treadwell, is that right?

A There is a mark on the back. What the transactions were between Treadwell and Mr. Leonard I did not know. Except for what the contract said here, I didn't follow up on that.

Q In the course of your audit did you determine whether or not any deductions were taken for those checks?

A As I said, when I received the checks, I didn't do any more work on the case. I had received the checks, and it was just about that time that I was on my way.

Q Well, the checks were received some time around October of '69 and then you left and then in June --

A Oh, wait. There is another point that has to be brought in. This was not the only company that had mailed the letter to me. I had requested letters from, I think, ten, twelve companies, and I was gathering the information as these letters were coming in relative to the payments and deposits. So I don't want you to think this just came in, I saw the checks and let them sit. I had ten or twelve letters out.

Q This information was the Union Carbide Information--

A Right.

Q -- which you gave to Singer, which wound up in the Fraud Referral Report.

A Yes.

Q You left in June of 1970, is that right?

A I think the actual leaving date was around July 5.

Q You said you did not do any checking on that after the checks were received, but before the checks were received on this case which you were on for two years you did a tremendous amount of checking on the expenses, did you not?

A Oh, yes.

Q Did you determine whether there were any deductions taken for those checks which I have just read into the record which are before you?

A I was verifying invoices and payments against deductions that were claimed. I hadn't gone to the point where I was matching up the expenses deducted against the income received.

Q So you cannot tell his Honor and the ladies and gentlemen of the jury whether or not those checks were deducted or included in income, can you?

A I could say they weren't included in income. To the point I thought they weren't included in income, is the best I can tell you.

Q You don't know in fact whether there was any deduction taken?

A In relation to this specific income?

Q Yes.

A No.

Q When you left the case, there were a number of open items which were to be checked out by the agents who were going to take over after you, is that right?

A That's right.

Q And one of them would be to check out whether Treadwell had received these checks and whether or not there were any deductions taken for those by Leonard; right?

A Yes.

Q Let me show you Government's Exh ibits 7, 8, 9, 13, 15, 17, and 19. Would you tell us, please, if those represent the fixed even amounts which were set forth in the contract.

A The fixed amounts that we previously mentioned was a $50,000 amount, $130,000 amount, and then there were the $37,000 amounts -- I think ten $37,000 amounts that were paid. And this is what you are showing me now.

Q Yes, sir.

A Yes.

Q Do you see on the back that they are all marked "For Deposit"?

A Yes, they are. Well, let me turn them all over.

Yes, they are all -- well, four of them are marked "For Deposit." This one is not marked "For Deposit."

Q What date is that one? Would you identify the number, please?

A It's dated September 18, 19 -- the check is dated September 18, '67.

MR. MacDONALD: The exhibit tag?

THE WITNESS: Oh. Exhibit 13.

Q That is a 1967 check. Didn't you determine whether or not that was in fact deposited into a bank account and reported to the United States Government?

A Not this check.

Q Now if we can go to this meeting with Mr. Leonard in March of 1969. Did you take any notes during the course of that conversation with Mr. Leonard?

A No, I did not.

Q You had been specifically instructed by your project leader to go and talk to Mr. Leonard on the matter of Swiss banks, is that right?

A Well, we were going to have a meeting, and I was told to confront Mr. Leonard and ask him if he had a Swiss bank account.

Q That was the very purpose of your participation in the project, to ultimately confront the taxpayer; is that

right?

A It seems it may have turned out that way.

Q Well, that was the purpose of the FBA, if I can call in short term the foreign bank account?

A The purpose of the FBA was to determine audit techniques to determine foreign bank accounts.

Q And to do that you were instructed to contact the taxpayer; right?

A This came later on.

Q The answer is yes?

A Yes, later on we were told to contact the taxpayer.

Q You walked in and you talked to Mr. Leonard and you did not take a single note; is that right?

A That's right.

Q From that day until this, you never once reduced what you claim took place at that conversation to paper, did you?

A That's not true.

Q Will you tell us what paper you have reduced it to?

A Now, this was a multipurpose conversation, as we mentioned --

Q No, no, tell us the paper.

A Please. For the FBA part, where I asked the

taxpayer, "Do you have any foreign bank accounts?", that would have had to be reported on the Monthly Status Reports that we handed in to the project leader.

Q Which unfortunately have been destroyed.

A I can't even answer that. We did a very, very diligent search. I can make the assumption that they are destroyed, because we can't find them. I can't tell you honestly whether they are destroyed or not.

Q Do you remember sitting down and writing down what was said at that conversation in one of your reports?

A I would have had to. We were required to report.

Q No, no, that is different. "Would have had" means maybe, maybe. Yes or no, do you remember?

A No, I don't remember sitting down, but it just had to be done.

Q But you don't remember.

A Writing that report?

Q Yes.

A I remember writing the report. I don't remember exactly what I put into the report, sir.

Q One report did survive the disbandment of this unit, did it not, so there is no mystery about it?

A I believe we saw a copy of one.

Q Let me show you Defendant's Exhibit J for

identification and tell us whether or not you recognize that, sir.

Let me just get some of these papers out of your way.

A Yes, I remember this.

Q Is that your report, sir?

A Pardon me?

Q Is that your report?

A This is a report of mine.

Q Did you say you confronted Mr. Leonard personally, face to face; is that right?

A Yes, I did.

Q And his responses in March of 1969 were oral, were they not?

A Yes, they were.

Q Later on he gave you -- strike that.

Later on an affidavit was given to you by Mr. Leskowitz, is that right?

A That is right.

MR. TIGUE: I offer in evidence, your Honor, page 2 of Defendant's Exhibit J, which relates to the portion only "Person Confronted."

MR. MacDONALD: Surely I have no objection to page 2. I am looking at page 1 to see if we would press for

the introduction in its entirety.

MR. TIGUE: I am just offering the inconsistent portion, your Honor.

THE COURT: Strike that statement from the record, ladies and gentlemen. Statements of counsel are not evidence.

MR. MacDONALD: Do you have any objection to the whole thing going in?

MR. TIGUE: I move to strike that too. I am offering the portion which I believe is admissible. I believe the rest is hearsay.

THE COURT: Let me see which portion you wish to offer.

MR. TIGUE: Under "Person Confronted," your Honor.

(At the bench)

THE COURT: You want just this one line "Taxpayer representative"?

MR. TIGUE: The line that starts "Person Confronted," your Honor, and then "Nature of Response," that line.

Your Honor struck my remark from the record. I wish you would strike Mr. MacDonald's remark where he makes a gratuitous offer which he knows is hearsay and which I am not offering.

w THE COURT: That has nothing to do with this. I struck your claim because you claimed this was a contradiction, and you put that on the record as a statement of fact, and that is for the jury to determine: whether it is a statement of fact. That is why I struck your remark out. Mr. MacDonald's offer of the entire thing is not a representation of any fact contained in this paper.

MR. TIGUE: I apologize, your Honor. That was unintentional.

THE COURT: All right.

MR. TIGUE: But I do believe the rest of it is hearsay. Just because I offer a portion of what I regard as a prior inconsistent statement, I don't believe it is proper for the government to make an offer in the presence of the jury for the whole document.

He can offer on his redirect examination. I will object and I am confident the jury will --

MR. MacDONALD: We can always come to whether a contextual change is possible. I will make no further remarks. The original offer as I understood it was of page 2.

MR. TIGUE: Yes.

MR. MacDONALD: But now it is limited not to page 2 but only to those two questions and those two answers. You still don't want the whole page 2 to go in.

MR. TIGUE: That is correct.

THE COURT: I don't understand frankly what is meant by "Written Qualified."

MR. MacDONALD: I think "Qualified" in paragraph 2 of the affidavit refers to an Australian bank loan. Thus, it was not an unqualified, absolute foreign --

MR. TIGUE: It is simply, your Honor, I want to show that there was no statement of any oral conversation. I think it is important enough to bring out on his cross-excaination, that, for instance, above he says "Person Contacted, Taxpayer or representative." Then the answer is "Taxpayer and representative." But when it comes down to whether it is written or oral, he does not say "Written and oral"; he simply says "Written."

I would like to be in a position to argue to the jury that there was no oral confrontation.

MR. MacDONALD: Here we have a report with a word here and a word there to be responsive to all these relatively innocuous questions. Maybe, Mr. Tigue, on reflection, does not object very vigorously to the whole thing going in. I just hate to have a one-word answer in what was obviously called for, a number of one-word answers here and there. And if you don't really care about it, there is nothing great on it.

MR. TIGUE: For instance, "Adjusted Gross Income Per Return." Then there is some information about '65 and '66. I don't want to get into those years any more than we already have. I would like an opportunity to take a look at this carefully. Could your Honor just give me thirty seconds to read it? I might not object to the entire paper.

THE COURT: Very good. Why don't you do that.

(Pause)

MR. TIGUE: The only objection I would have, your Honor, is to the top of the second page, there is one line there which says "Unusual items." That is a characterization which Mr. Laski and the government have made, and I don't propose to put that before the jury. The rest of it I have no objection to.

THE COURT: This is page 2 you are talking about?

MR. TIGUE: Yes, your Honor. See where it says he reported 300,000, he should have reported 700,000?

THE COURT: Not on page 1.

MR. TIGUE: No, your Honor, on page 2, the very top. There is no objection to page 1, your Honor.

THE COURT: No objection to anything on page 1?

MR. TIGUE: No, your Honor. Frankly, I intended to go over that with him anyhow, but for the moment I wanted this one.

wc 19

THE COURT: You mean page 1.

MR. TIGUE: Page 1 I agree should all be in, your Honor. Page 2 should all be in except that handwritten line about the gross income. I think that is perhaps what Mr. MacDonald is hoping to get in.

MR. MacDONALD: If we blank it out --

MR. TIGUE: I will blank it out now and read this portion and substitute it.

THE COURT: Then this exhibit will be admitted with the exception of unusual items reported on return or found during examination.

MR. MacDONALD: Why don't we just leave the question in and leave the answer blank?

THE COURT: And the penciled answer will all be excluded.

MR. TIGUE: I would say the item too, because the jury will draw the inference that there was something in there unusual, and I would exclude it. I think the whole question should be excluded.

MR. MacDONALD: All right.

THE COURT: So, to that extent, there is an exclusion. The balance is admitted in evidence.

MR. TIGUE: Thank you, your Honor.

MR. TIGUE: May I read this to the jury, your Honor?

THE COURT: You may.

(Mr. Tigue read to the jury from Defendant's Exhibit J.)

BY MR. TIGUE:

Q Now, getting back to my original question, Mr. Laski --

MR. TIGUE: Well, let me withdraw that.

Q In the report I have just read, I read the portion where it says, "Who was confronted?" and your answer was "Taxpayer and representative". I don't know if you have a copy before you.

A No.

Q Let me give you this.

Referring to the portion about "Persons confronted", on the second page, in there you had an answer -- the question asked if either the taxpayer or his representative was confronted, and you answered "Taxpayer and representative", that both the taxpayer and his representative had been confronted; is that right?

A That's right.

Q And when you answered whether the response was written or oral, you said only "written", right? -- and "qualified", but written.

A Yes, but this question covers more than you realize. You are taking the form, not realizing what purpose it was originally intended for, and you are assuming that there was one response. That's not quite true.

Q I am not assuming anything for the moment. I am just asking for the response.

The form asks you to say "Nature of response to confrontation, written or oral", and you said, "Written" is that right?

A Yes, but that is not entirely the truth. You don't understand what this form was for, and you are trying to put it for another purpose.

If you want me to explain, I will.

MR. TIGUE: I move that remark be stricken from the record.

THE COURT: Strike it out.

THE WITNESS: Your Honor, I would like to explain what it was --

THE COURT: Well, Mr. MacDonald will ask you appropriate questions on redirect if he wishes to.

Q Let me show you what purports to be an exhibit -- well, it is Exhibit 75 of the Government, and it purports to be an affidavit with a signature and notarization at the bottom, and while that purports to be signed by Jackson

Leonard, you are the author of that affidavit, are you not, sir? That is, you dictated its provisions?

A I dictated that part of the provisions. I dictated the statement that "I do not now and I have not had any foreign bank accounts. I have not had any transactions or dealings of any nature with any foreign banks or other representatives except for the following", and that was the Australian bank that Mr. Leonard had told me about.

MR. TIGUE: I don't believe this has been read to the jury. I would like to read it. It is just a short page, your Honor.

THE COURT: You may.

MR. TIGUE: I better get the original. This copy is marked up.

(Mr. Tigue read to the jury from Government's Exhibit 74.)

Q Now, what was the name of the Australian bank which is mentioned in this affidavit?

A I don't remember that.

Q You have no idea; right?

A I remember the company was LaPorte, but I don't remember the bank.

Q Were you ever told?

A It could be. I don't remember that, either.

Q You have no recollection whether or not you were told what hte name of the Australian bank was; is that right?

A It doesn't pop into my mind.

Q Did you ever determine whether or not the Australian bank had corresponding banks or branches in Switzerland?

A No; I didn't.

Q Mr. Laski, I show you Government's Exhibit 1 in evidence. It purports to be a tax return of Jackson Leonard. Did you ever discuss that exhibit with Mr. Leonard?

A The 1967 tax return?

Q Yes.

A Our discussion was limited to what I mentioned it was before.

Q I see. And Government's Exhibit 2 in evidence is the 1968 return, and it is a fact that you never discussed that exhibit with Mr. Leonard, either; is that correct?

A No; I haven't.

Q Now, when you received the checks from Union Carbide, which amounted to some hundreds and hundreds of thousands of dollars, did you come back to Mr. Leskowicz and ask him for an explanation?

A No; I didn't.

Q After you received those checks from Union Carbide Corporation for hundreds of thousands of dollars, did you come

back to Jack Leonard and ask him for an explanation?

A No; I didn't.

Q During the course of time that you worked on the Leonard case, you solicited from Mr. Leonard what is known as a Form 872, statute of limitations consent to extension; did you not?

A I don't think we extended the statute in that case. No, wait. I remember. We didn't -- We took the SS-10's also for the payroll taxes. We extended the 872's and the SS-10's.

Q Could you briefly explain the form and the statute of limitations it refers to?

A Well, in taxes there is a three-year statute after the due date of the return or the date that the return was filed, whichever is later, which allows the Government to make an assessment on the tax. Many times, when we are running a few years out of time, we ask the taxpayer if he would comply with an extension or a waiver of that statute for a period of time of anywhere from six months to a year.

There's a lot more to it than that.

Q And what you customarily do during an audit is, you ask the taxpayer to waive his rights under the statute of limitations and extend it for an additional period of time?

A Yes; it is.

Q And that was done in this case?

A Yes; it was.

Q You gave Mr. Leskowica the form, and it came back, signed and returned to you; is that right?

A Yes.

Q You were aware during the course of your investigation that Mr. Leonard conducted business with businesses located throughout Europe?

A Yes; I was.

Q And would that include Germany, Switzerland?

A Not Switzerland. There was British Hydrocarbon. There was a company in the Netherlands, a couple in the Far East, Nippon, Japan Gas. There was no company that he was working on in Switzerland that I remember.

Q Do you recall a company by the name of Geigey?

A No; I don't.

Q You don't recall that?

A Geigey? No.

Q I think it is pronounced Geigey. I think I have the right spelling, G-e-i-g-e-y.

A No; I don't recall.

Q Do you know whether or not their home office is located in Switzerland?

A No; I don't.

Q Now, with respect to the checks I showed you from

Union Carbide which bear the endorsement of Treadwell on the back --

A Right.

Q -- if those checks were received by the Leonard Process Company and turned over to the Treadwell Company, what impact if any would that have on the adjusted gross income of Jackson Leonard?

A If they were received by Leonard Process Company?

Q Yes.

A It may -- it may be included in gross income, which would be included in adjusted gross. It may. It depends.

Q And the payments out: would that be a deduction to arrive at adjusted gross income?

A I would say if under the contract it was properly includible in adjusted gross, if a payment was made under the contract to Treadwell, then they would be entitled to a deduction.

Q So all the money came in, and all the money came out --

A If it was for an expense item.

Q The effect on the adjusted gross income would be zero; right?

A Pardon me?

Q If these checks, these Treadwell checks came in from Union Carbide and were included in the gross income of Leonard Process Company and the money was paid out, the same amount of money under the contract to Treadwell, the impact on the adjusted gross income would be what?

A I think you are using the term "adjusted gross income" for a company, whereas it is for an individual. We don't have adjusted gross income for a company. We have gross less expenses.

Q You knew that the Leonard Process Company in 1967 was a proprietorship; is that right?

A Well, that was a Schedule C proprietorship.

Q And when an individual prepares his gross income for his income tax return, he has a right to take a deduction for his business expenses when he arrives at his adjusted gross income; is that right?

A Certainly.

Q And if an individual has a company which is a proprietorship, he has a right to whatever business deductions are allowable?

A Yes; as long as we are talking about a Schedule C sole proprietorship, that would be right. I was under the impression that you were talking about a 1065 partnership or a corporation. Under a sole proprietorship, if the payments

had been received into gross income and had been legitimately paid as an expense item to another company, that would be a deduction, and the net amount would be included in adjusted gross, which could be a net figure of zero or whatever it would net out to.

Q Well, if the amounts were exactly the same, it would amount to --

A It would zero out.

Q Now, you observed that in 1967 the records of Mr. Leonard were quite confused, were they not, would you say?

A Yes.

Q And would you also say that they were kept in a very unprofessional manner?

A Yes.

Q And when you arrived on the scene, in 1968, by that time, Mr. Leonard had engaged the services of the firm of Lescowicz, Brower & Driver; is that right?

A Yes.

Q And Mr. Leskowicz was his accountant; is that right?

A Yes.

Q And in 1968, the records for 1968 were established by Mr. Lescowicz; is that correct?

A What? In 1968, for 1968?

Q Yes.

A I didn't look at 1968.

Q You, you didn't look at 1968 --

A I did my work for '65, '66 and '7. In this contract that we have for Union Carbide, somebody following me could have used that same contract to work on another year. My work was confined, and I had no return file of work papers or anything to go into '68. I conducted my audit limited to '65, '6 and '7.

Q During the course of your audit, did you ask to see the books and records of Leonard Process Co., Inc.as of 1968?

A No.

Q No?

A No. I didn't even know it existed in '5, '6 and '7.

Q Do you know whether or not the assets of Leonard Process Company were transferred to the Leonard Process Co., Inc.?

A No; I don't.

Q Now, do you recall when the last time was that you saw Mr. Leskowicz?

A I would guess that it would be March of 1969.

Q From March of 1969 until June of 1970, you had no contact with Mr. Leonard; is that right?

A After that initial meeting I didn't speak with Mr.

Leonard. I spoke many times with Mr. Leskowicz on the phone.

Q No. My question --

A There may have been a meeting first. I don't remember. On the phone we spoke many times.

Q The question was with respect to Mr. Leonard.

A No.

Q You never spoke to him again?

A No; just that one meeting with Mr. Leonard.

Q In your whole life, you only spoke to him between thirty and forty minutes?

A With Mr. Leonard?

Q Yes: Mr. Leonard. The man over there.

A Mr. Leonard.

Q Now, during the course of your audit, did you obtain a power of attorney from Mr. Leskowicz?

A That's going back quite a bit. I would assume in my normal procedure I did. I did not factually state if I have one in my file or not. I wasn't shown my file as to that.

Q Do you remember, sir?

A No; I don't.

Q The normal procedure would be to obtain a power of attorney; would it not?

A Yes.

Q And you had no reason in this case to vary from the normal routine?

A Not at all.

Q During the course of your audit of not only '67 but of '66 and '65, you observed, did you not, that if on the record of Mr. Leonard and his company, there were a number of transactions where the money for purchase of equipment would be deposited to the account, and the price of that would also be written out on a check of the account, in effect neither transaction was reflected on the books; is that right?

A May I ask you, was that for the Catalyst that you are speaking of?

Q Well, do you recall the Catalyst? I am talking about during the course of your audit, did you discover that there were a number of transactions that were sometimes referred to as wash transactions?

A Yes.

Now, in this form, this foreign bank account form, you mentioned that the gross income for 1967 was $461,000; is that correct?

A For 1967, four hundred -- and how much?

Q $461,000.

A I'm sorry. I have 259,052. Schedule C, Gross income. 461.

Q Right. So the gross income from the business was $461,000; is that correct?

A That was the gross income.

Q And an individual's gross income includes all the other items like interest and dividends and that sort of thing?

A Yes.

Q So that the gross income for Mr. Leonard for that year would be somewhat higher; is that correct?

A Than the 461,000?

Q Yes.

A Oh, no.

Q The gross income would not be higher than 461,000?

A I'm sorry. The gross income, yes, would be higher.

Q Now, during the course of your audit, did you ever issue a revenue agent's report?

A No; I didn't.

Q Did you ever submit an assessment or a notice of deficiency to Mr. Leonard for unpaid taxes?

A No; I didn't.

Q The name Robert Lipsit doesn't mean anything to you at all?

A I remember the name as an employee. I said I never met the man or had dealings with him.

Q You would come across that during the course of your vouchering the expenses and so forth?

A Yes.

Q Now, yesterday I believe you testified about the Chinook Chemical -- or what is the full name of Chinook? Do you recall?

A Chinook --

Q Chinook Corporation or -- Do you know what Chinook is all about? I mean, what does it do for a living?

A No; I don't.

Q Do you know whether ornot it is a chemical company?

A I don't personally know whether it is a chemical company or not.

Q That was one of the items which you had on your agenda to discuss with Mr. Leonard; is that right?

A Yes.

Q And during the course of inquiring about that contract, were you given an opinion of counsel relating to that?

A During the course of the audit I was given an opinion of counsel.

Q And you put that in your work papers, did you not?

A Yes; I did.

MR. TIGUE: may I have a moment, your Honor? I can't find my copy.

THE COURT: You may.

Q While Mr. MacDonald is looking, will you take a look at this and tell us if you recollect having ever seen that before, sir.

A Yes. It appears to be --

Q Just a moment. Can you identify that for us, sir?

A Yes. This is an opinion of counsel in response to a request that I made on an issue I raised that certain payments that we were holding or wanted to hold as income were supposed to be investments in stock in the corporation. In a broad sense that's what it is. I can be more technical if you want.

Q No; that will do for the moment.

When you received that package, were there financial statements attached to it?

A That I don't remember. I know it was a thick package. To my mind, this could be the entire thing I received. I remember we went through the step transaction.

Q Would it assist you to take a look at your copy?

A No. I don't think I could tell if there were any --

Q Well, your copy you left in the file. Did you take a look through the Chinook file?

A No.

Q You testified yesterday about Chinook, did you not?

A Yes; I remember.

MR. TIGUE: I wonder if your Honor would call the lunch hour not, so Mr. Laski would look and see what was given to him.

MR. MacDONALD: Here it is. You can do that right now.

THE COURT: All right.

Q Mr. Laski, would you take a look through Defendant's Exhibit L for identification, starting with the back portion. What I am referring to is the document which is dated February 13, 1969.

MR. TIGUE: May I have my copy back?

THE COURT: Mr. Tigue, Mr. Laski has examined the exhibit.

Q (Continuing) Is that the document you received from Mr. Leskowicz?

A I would say yes. It has my notes on it, my underlinings on it. so I would say this is mine.

Q Were there exhisits which were attached to that?

A I would say everything that came in this package was attached to it.

MR. TIGUE: May I just take a look at this, your Honor? I have not had an opportunity to examine the whole document.

MP 17

THE COURT: Ladies and gentlemen, we will recess for lunch until two o'clock.

(The jury left the courtroom.)

THE COURT: Mr. Tigue, are you going to be offering this letter of counsel in connection with Chinook?

MR. TIGUE: I am, your Honor.

THE COURT: On what basis?

MR. TIGUE: On the basis, your Honor, that another Government witness today, I believe, I will contend that some information was withheld from the Internal Revenue Service, and I would like to be able to establish that that is not the case.

THE COURT: Well, we will cross that bridge when we come to it.

MR. TIGUE: I have at least succeeded in having him identify it, your Honor.

THE COURT: That you have. Now, as of the present posture of the record, I don't see how the self-serving statement of a lawyer or lawyers, I gather for or affiliated with Mr. Leonard on the Chinook venture has applicability with this case.

MR. TIGUE: Well, I would offer it to prove, your Honor, -- if I take a look at all those documents in there -- that in part the letter contains some general theory as to

what is included in gross income and what is not included in gross income and that this document was exhibited and given to Mr. Leonard prior to the filing of his 1968 income tax return, and I would offer that as part of an advice of counsel defense with respect to the charge as to what is included in gross income and what is not.

THE COURT: This is on the theory that he relied on advice of counsel in the preparation of the return, and therefore it was an error entered into in good faith?

MR. TIGUE: Yes, your Honor.

THE COURT: Doesn't thathave to await some proof in this case that he sought and relied on it?

MR. TIGUE: Well, I certainly think on that ground it would have to await a showing that, number one, he sought advice of counsel. I think it might be admissible on that ground alone, that he saw it.

THE COURT: We aren't there at this point. All you have at this point is Mr. Laski saying he received this.

MR. TIGUE: Now, I hope to establish that it came from the author to the IRS.

THE COURT: Mr. MacDonald, do you object to it on this state of the record?

MR. MacDONALD: I would just hope that it would be postponed until either the lawyer is called or the accountant

or Mr. Leonard, who relied on it, that it doesn't go in as sort of the -- Your Honor might look at it. It is an incomprehensible, fifteen-page opinion citing hundreds of cases on the tax treatment in securities law, and it really had nothing to do with Union Carbide or Treadwell, and it is on another subject.

THE COURT: I take it at this time when it is offered you will object to it?

MR. MacDONALD: Yes.

THE COURT: Is there a copy that I might peruse over the lunch hour?

MR. MacDONALD: It is 3501-A-5 or -6.

MR. TIGUE: I would certainly be glad to offer it out of the presence of the jury, your Honor.

MR. MacDONALD: A-6. The memorandum is the last page of those attachments.

THE COURT: All right. Two o'clock.

(A luncheon recess was taken.)

AFTERNOON SESSION

2:00 p.m.

MORTIMER LASKI, resumed.

CROSS EXAMINATION (Continued)

BY MR. TIGUE:

Q Mr. Laski, when we left off I think you had before you Defendant's Exhibit L, is that, or M?

A I have L.

Q Is that the entire file that was given to you by Mr. Leskowicz?

A Was this the entire file given to me by Mr. Leskowicz?

Q Mr. Leskowicz delivered to you an opinion, with some exhibits to it, right, in 1969?

Is that correct?

A I received this. I don't remember if it came directly from the attorneys or from Mr. Leskowicz.

Q You will notice on page 8 of the opinion there is reference to some financial statements.

Can you tell us whether those were closed or not? At the very bottom of the page.

A There are two numberings on this. I am afraid these pages are out of context.

I am sorry, I don't see that on page 8, sir.

MR. TIGUE: I am showing the witness Defendant's Exhibit K, which is another copy.

Q If you give me a minute, I might find it in yours. I hand you Defendant's Exhibit L, and I refer to page -- what has been numbered sequentially as 539 on there, and you will see there is reference to some financial statements.

Can you tell us if you received that as well?

A I don't remember whether they were part of this exhibit or not.

Q On your direct testimony, Mr. Laski, you made reference to some payments in connection with the Catalytic Construction of Canada, Limited.

Do you recall that?

A Yes.

Q It is your recollection that you were told that those payments were made in cash?

A Yes.

Q Do you recollect, Mr. Laski, Mr. Leskowicz making any statement that the payment was made from Chinook?

A No.

Q From Chinook through the Leonard Process Company to this Catalytic Construction Company?

A No, sir.

Q That was never told to you.

A That is to the best of my recollection I don't remember that being said.

Q Incidentally, the payment we are referring to goes back to at least 1965, is that correct?

A It was right on the border of '65, '66. There were two payments, I believe, '64, '63.

Q Approximately ten years ago?

A Yes.

Q With respect to this conversation of March '69, after that conversation, did you ever have the conversation with anyone about what was said at that meeting, like in December of 1972?

A Yes, I did.

Q Was that the first such discussion you had of that?

A Yes.

Q And that would be about what, three years and nine months later?

A Yes.

Q That was the very first discussion you had since the discussion with Mr. Leonard and Mr. Leskowicz, right?

A Yes, it was.

Q Incidentally, when you gave -- when you finished with the contract, which is Government's Exhibit 66, did you

A No.

Q Were you aware of any such dispute between Mr. Leonard and UCC at that time?

A Not UCC.

MR. TIGUE: Thank you. No further questions.

xx REDIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Laski, I have handed you Government's Exhibit 93 for identification and also Exhibit D for identification. Did he have Exhibit D -- or is it in evidence? I am not sure.

MR. MAC DONALD: It is not in evidence. We will offer it.

MR. TIGUE: May I take a second look, please.

May I inquire, is page 2 in evidence already as Government's Exhibit 86?

MR. MAC DONALD: Yes.

MR. TIGUE: I have no objection.

THE COURT: It will be received.

x (Defendant's Exhibit D received in evidence.)

MR. TIGUE: There is some handwriting on the second page of that. I assume my handwriting is not going in evidence.

THE COURT: I would assume not.

Q Have you completed your examination of the first exhibit I handed you, the Government's Exhibit?

A Yes.

THE CLERK: Is the blackboard also "D"? Do you have two D's?

THE COURT: Is the blackboard Exhibit D?

MR. MAC DONALD: I am sure we can agree to assign a new letter, which is not used, to whichever.

MR. TIGUE: Yes. May I change the drawing to D-1, your Honor.

THE COURT: You may.

MR. TIGUE: And this will persist as "D", which is the UCC letter.

Q Address your attention to the top yellow sheet. Does that document refresh your recollection with respect to the date on which you made a request of Mr. Czajkowski's office at Union Carbide for copies of checks made payable to the Leonard Process Company by Union Carbide?

A I am afraid it doesn't.

Q Would you look at what's marked "D" next to you, the letter. My question is: Comparing the two, is your recollection refreshed that you received first from Union Carbide a mere tabulation of payments, and that it was after some period of time that you later received copies

of check instruments?

A I believe that that was the case.

Q Can you give us your best recollection of approximately when you first saw copies of the checks?

A No.

MR. MAC DONALD: Perhaps there will be no objection to Government's Exhibit 93 for identification, which we offer if there isn't.

MR. TIGUE: May I take a look at it, your Honor?

THE COURT: You may.

(Pause.)

MR. MAC DONALD: May we have marked as Government's 99 for identification, a packet of paper.

xx (Government's Exhibit 99 marked for identification.)

MR. TIGUE: Might I inquire, your Honor, of Mr. MacDonald just one question? I don't understand something about this.

THE COURT: You may.

(Conference between Mr. Tigue and Mr. MacDonald.)

MR. TIGUE: No objection, your Honor, to 93.

THE COURT: It may be received.

x (Government's Exhibit 93 received in evidence.)

MR. MAC DONALD: I will read the top page, your Honor.

(Mr. MacDonald read to the jury from Defendant's Exhibit 93.)

Q Mr. Laski, can you tell the jury, please, if during the course of your examination of various contracts for Mr. Leonard you examined a contract for the Japan Gas Chemical Co., Inc.?

A Yes, Idid.

Q Do you remember if you also were presented with invoices pursuant to which payments were made under that contract?

A Yes, I was.

Q Do you remember examining a contract or a technological agreement between Chemique Belgium, S.A. and Leonard Associates?

A Yes, I do.

Q Do you recall whether or not there were any invoices or bills presented in connection with that contract?

A There were.

Q How about the Chinook Chemical Corporation technological agreement, part of which was reproduced in Defendant's Exhibit L?

A Yes.

Q Do you recall if you saw invoices in respect of that contract also?

A I believe I did.

MR. MAC DONALD: By agreement of counsel, we are attaching a second page to what has been previously marked Government's Exhibit 89 in evidence and I will just ask one question of the witness.

THE COURT: Very good.

THE CLERK: That is already received?

MR. MAC DONALD: Yes. Staple the second page to it, please.

Q Mr. Laski, can you identify the page that we have just added as being additional extracts which you made on or about the time of your examination of the Carbide contract?

A Yes, this is my handwriting.

Q All right.

Will you look at Government's Exhibit 99 for identification and tell us, if you can, what that exhibit is and if you can identify it to the jury?

A I believe this is the Appellate report for the years 1961 and 1964 on Mr. Leonard.

Q Which Mr. Tigue asked you if you had read prior to the beginning of the conduct of the audit?

A Yes.

Q And is that the very document which you had read and perused to prepare yourself for --

A I believe it is.

MR. MAC DONALD: Subject to Mr. Tigue having overnight to read that, I will offer it. I would like to give him the opportunity to examine it.

THE COURT: All right.

MR. TIGUE: I gather Mr. Laski is on his way back to sunny California. That will present a problem. Maybe I can read it during the break.

THE COURT: Very well.

Q I show you Defendant's Exhibit E for identification, and I ask you if that's a written memorandum which you received at the outset of your assignment to audit Mr. Leonard's tax return as part of the FBA Project?

A Yes, it was.

Q And whom is the memorandum addressed to?

A Foreign Bank --

Q From someone with a title and to someone with a title?

A From the Assistant Regional Commissioner, Audit to District Directors, Manhattan, Attention: Chief, Audit Division.

Q And are those the written instructions which you received at the outset of the audit?

A Yes, they were.

MR. MAC DONALD: We offer that exhibit.

MR. TIGUE: May I just ask one question on the voir dire?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q Mr. Laski, it says something on the first page about guidelines being furnished to examiners. Is that in addition to this letter?

A I am reading it.

The guidelines that were in addition to that would be the ones that we received when they said, "Confront the taxpayer directly and ask him about the bank."

We then received, some months later, further guidelines saying, "Get a written statement from the taxpayer".

Other than that, what we normally did was to look at telephone receipts to see if calls were made out of the country, to look at cancelled checks, to see if checks were drawn to foreign banks, to see if telegrams were sent to foreign countries.

It wouldn't be my normal audit to look at those things.

MR. TIGUE: May we approach the bench?

(At the side bar.)

MR. TIGUE: I want to preserve my objection to this. I can't consent to the line showing the Swiss bank account and on the additional ground that it's hearsay and it's doubly harmful. It's not only hearsay but it's partial instructions that he has received, and I don't think it's admissible, as hearsay.

THE COURT: If this were taken out, would that satisfy you?

MR. TIGUE: The portion I object to is the "People's Bank, Switzerland."

THE COURT: If that were taken out --

MR. TIGUE: Yes.

THE COURT: What is the purpose for which you want to offer this?

MR. MAC DONALD: The cross examiner opened the door with respect to the instructions, that is, written instructions pursuant to which the audit was conducted, and I am offering it so there will be no ambiguity in connection with what the written format was, and on the basis of information -- I don't offer that paragraph which Mr. Tigue really objects to for the truth of the content therein, and I think a limiting instruction that this sentence, including the idea of the bank, is not offered for the

truth of the matter contained therein will suffice. It's offered solely and exclusively as part of Mr. Laski's written instructions, and that would be sufficient probing to overcome Mr. Tigue's objection.

MR. TIGUE: I don't agree to that.

THE COURT: Well, I won't receive it at this time.

MR. MAC DONALD: We will mark it.

THE COURT: If there is any foundation laid further, I may change my ruling, but at this point Mr. Tigue is correct. I don't see any purpose in receiving it. Maybe one of you can make a redacted copy of this.

MR. TIGUE: You can offer it and read this part now.

MR. MAC DONALD: All right.

THE COURT: It is admitted in evidence subject to that one excision.

(Defendant's Exhibit E received in evidence.)

(In open court.)

(Mr. MacDonald read to the jury from Defendant's Exhibit D.)

MR. MAC DONALD: We have nothing further.

MR. TIGUE: Just one question, your Honor.

RECROSS EXAMINATION

BY MR. TIGUE:

Q Mr. Laski, I asked you about some additional guidelines; were those in the form of written instructions to you?

A Not that I remember.

Q You were not furnished any other guidelines to you and your colleagues to enable you to do a thorough professional job?

A Only to the extent of on an individual basis, if you were stuck, you would go to the project leader and say, "How do you think I shouldproceed from here?"

And then you put your heads together and say, "well, why don't you try this?"

MR. TIGUE: No further questions.

THE COURT: Mr. Laski, you may step down.

Mr. Laski, I assume, is going to be available during the afternoon?

MR. MAC DONALD: Yes, he will wait in my office downstairs.

(Witness excused.)

R I C H A R D F. O L S O N, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Olson, will you tell the jury by whom you are employed, please.

A Treadwell Corporation.

Q How long have you been an employee of Treadwell?

A 22 years.

Q Will you tell us what your title is and if it was different from 1966 to 1968?

A I am treasurer and secretary now. I was controller during that time.

Q Can you tell the jury what Treadwell's business is?

A Construction, engineering and special machinery.

Q And do you have a facility here in New York that employes engineers and draftsmen?

A Yes.

Q And during 1967 and 1968, did you in your capacity as controller, issue certain checks drawn on the Treadwell Corporation's various bank accounts?

A Yes.

Q I would like you to look at what was previous marked Government's Exhibits 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55. 56, 57, 58, 59, 60, 61, 62, and 63 and tell the

the jury if you can, identify each of those as being either an original or a copy of a check of the Treadwell Corporation?

A All checks of Treadwell Corporation.

Q And have you previously examined the books and records of the Treadwell Corporation for the original checks, copies of which appear in that batch of exhibits?

A Yes.

Q Will you tell the jury if you were able to find those original checks?

A No, I was not.

Q Why was that?

A Under our normal construction we don't have space for storing all the records that are there. We just get rid of all we had.

Q Did you transmit the copies which are before you --

MR. MAC DONALD: Withdrawn.

Q Let me show you Government's Exhibit 49 for identification and ask you if you would please identify this to the jury.

A It's a copy of a page from our cash journal ledger of 1967.

Q And does a red arrow indicate a specific entry in that ledger?

A Yes.

Q Without reading from the exhibit, will you tell us what that entry indicates?

A It's a check made out to Leonard Process for $37,000.

Q Does it correspond --

MP. MAC DONALD: Withdrawn.

Q Were you able to locate either the original or a copy of that check?

A No.

Q And is the Exhibit 49 the only record in existence, to your knowledge, which Treadwell can produce with respect to such a payment?

A Yes.

MR. MAC DONALD: I offer all of the exhibits at this time.

I should state for the record at this time, your Honor, that the succeeding witness will identify certain red encirclings on the check -- the succeeding witness -- and we don't offer those at this time and we won't pass them to the jury yet.

THE COURT: Very well.

MR. TIGUE: I have no objection to those. If Mr. MacDonald will read the numbers into the record --

THE COURT: Mr. MacDonald read the numbers to the witness into the record.

MR. TIGUE: We have no objection to those checks and the ledger.

THE COURT: All right, received.

xx (Government's Exhibit 44 through 48 and 50 through 63 received in evidence.)

Q Mr. Olson, directing your attention to in or about June 1971, did you receive a communication from Mr. Leonard with respect to certain records?

A I didn't, but Mr. Spitzer did, who is now president. He passed it on to me.

Q Will you tell the jury what that request was insofar as -- what you did in regard to that request?

A I prepared copies of invoices, and if I remember right, I think we mailed them out to Mr. Leonard.

Q And were those invoices which Treadwell had originally returned to Mr. Leonard in respect to the Carbide project?

A Well, actually, they were returned to Carbide.

Q The invoices were?

A Tne invoices.

MR. MAC DONALD: We have nothing further of this witness, your Honor.

CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. Olson, let me show you Defendant's Exhibit N for identification.

Is that your letter and the invoices, together with the copy of a letter you received from Mr. Leonard?

A Yes.

MR. TIGUE: I offer in evidence, if your Honor please, as Defendant's Exhibit N.

MR. MAC DONALD: We have no objection.

THE COURT: It may be received.

(Defendant's Exhibit N for identification, was received in evidence.

MR. TIGUE: May I just read the letter, your Honor?

I won't read the invoices.

(Mr. Tigue read to the jury from Defendant's Exhibit N.)

Q Mr. Olson, do you know Mr. Jackson Leonard?

A No, I don't think so.

Q Would you tell us a little bit about Treadwell, how large a corporation was it back in '67 and '68?

A Oh, I would say it was doing 18 to $20,000,000 worth of business.

Q And how many employees did you have, roughly?

A At that time I would say 500 employees.

Q Would the majority of those be draftsmen and engineers who were engaged in the business of design?

A About 125 of them would have been draftsmen and engineers.

Q And they were basically draftsmen who would prepare designs and blueprints, is that correct?

A Yes.

Q I have again marked up my copies, but I would like to show you, Mr. Olson, an additional check which I will mark Defendant's Exhibit O.

MR. TIGUE: Just to save time. I would offer Defendant's Exhibit O, which would be a January 1969 check.

THE COURT: Received.

(Defendant's Exhibit O for identification, received in evidence.)

MR. TIGUE: Let me just identify it for the record because my handwriting appears there. It's a check of January 24, 1969, made payable to the Leonard Process Co. Inc.

Q Now, the total of the billings for those two years is somewhere on the order of about half a million dollars, is it not?

A That would be a good estimate. I don't have the figures.

Q And who was the person at Treadwell who engaged himself as the person in charge of the contract for Taft, Louisiana? Do you know who that is?

A I think it was a fellow by the name of Manetti, a project engineer.

Q Wasn't it a man by the name of Rogacki?

A He was there at the time.

Q Didn't he have some responsibility for this?

A I'm not sure.

Q Do you know who set up the arrangement for the payment of these invoices?

A No.

Q Was there also a man by the name of Mr. Mirkow, working for Treadwell at the time?

A Yes.

Q Do you know if he had some responsibility in connection with the UCC -- if we can shorten --

A I don't know. They assign a project manager. There could be any number of engineers or draftsmen.

Q I noticed, Mr. Olson, on Defendant's Exhibit N for identification, there is a number which appears on all the invoices in the upper left-hand side, which says, "Your

reference".

Could you tell us what that is, sir?

A It's the contract number of Leonard Process.

Q That would be the project number for the Leonard Process Co.?

A Yes.

MR. TIGUE: That number is 1,105-67.

Q Now, would that be the number which appears on the invoice, that Leonard Process would send to you or you would send to them?

A That we would send to them.

Q I am sorry. That Treadwell would send to Leonard Process.

A That's right.

Q Do you know if the Treadwell Corporation ever did any work in connection with the plant of Union Carbide which was planned for South Charleston, West Virginia?

A I don't know.

MR. TIGUE: Thank you very much, Mr. Olson.

MR. MAC DONALD: Thank you.

(Witness excused.)

CHARLES HOWARD McILWAIN,

called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. McIlwain, will you tell the jury what your occupation is, please?

A I am assistant vice president for the First National City Bank.

Q And during 1966 through 1968, did you have the same position?

A No, sir.

Q What was your job title and responsibility in that period?

A I was assistant manager at 37th Street and 5th Avenue.

Q And in that capacity, did you come to know Mr. Jackson Leonard, seated here in this courtroom?

A Yes, sir.

Q Will you tell the jury, please, if you at my request have recently obtained copies of signature cards for accounts at that branch?

A Yes, sir.

Q I show you Government's Exhibit 90 for identification and tell us if those are the copies for that account?

A Yes, sir.

MR. MAC DONALD: We offer Government's 90 for identification.

MR. TIGUE: No objection to Government's Exhibit 90, your Honor.

THE COURT: Received.

(Government's Exhibit 90 received in evidence.)

Q I show you Government's Exhibit 78 for identification and I ask you if you can identify it for the jury, as to what that document is.

A It is a copy of a statement.

Q For Mr. Leonard's account at 37th Street Branch?

A Yes, sir.

MR. MAC DONALD: Your Honor, we offer this statement, and I represent that the ink encirclings are not part of the offer and they are only because we didn't have a copy without the ink marks.

MR. TIGUE: I have no objections on the grounds of

authenticity, your Honor, but there are quite a few ink marks. I don't know if that is going to be displayed to the jury.

MR. MAC DONALD: I don't intend to. I will try to obtain a clean copy.

THE COURT: Very well, proceed.

xx (Government's Exhibit 78 received in evidence.)

Q Can you identify Government's Exhibit 82, please?

A This is a page from the liability ledger.

Q What period does it cover and who is the debtor?

A The debtor is Jackson E. Leonard. It covers from April 1st, 1968, to November 27, 1968.

MR. MAC DONALD: We offer it.

MR TIGUE: No objection, your Honor.

THE COURT: Received.

xx (Government's Exhibit 82 received in evidence.)

Q Mr. McIlwain, would you tell the jury, please, what the policy and procedure was during 1967 and '68 in the First National City Bank Branch for cashing checks when someone walked in and presented an instrument for cashing?

A If they were properly identified, it was their money, they could cash the check.

Q Would that depend upon whether they had an account at the 37th Street Branch at all?

A Yes.

Q Would you tell us in what respect having an account had anything to do with their entitlement to cash a check?

A How well you knew them and how substantial an account it was. If it was a substantial account, a person who had maintained a good account, a fine account, with you for a number of years, certainly they were entitled to their money when they came in and asked for it.

Q Would that policy be any different if it were a third party check, that is, a check from some corporation, for example, to the individual who has such an account?

A If it was payable to him, no.

Q But if it was payable to a company which was the trade name under which the account was carried.

A If we had the proper identification -- the proper -- what am I saying -- the proper documentation, that person would have a right to the money.

Q Would you tell the jury, please, what sort of customer Mr. Leonard was with respect to your branch?

A He was a very valued customer.

Q Will you tell us, please, in terms of magnitude or order of magnitude, what kind of account he carried with your bank?

A I can't recall -- I can't remember the balance in the account, but I would imagine -- I know there would have been considered very good balances, and certainly the potential as a good customer was there.

Q I would like you to look at the first signature card that is reproduced on Government's Exhibit 90 for identification, and tell us, if you will, under what name or names that account, at least the account bearing the number on that card, carried?

A It would appear that it would be Jackson D. Leonard. We had as documentation, however, a trade name certificate dated 7-18-55, indicating that he was the proprietor of J. D. Leonard Associates. I can't recall whether there was a different number for that account or not.

Q Is there an additional entry for the Leonard Process Company written in ink, although you can't, of course, see the color, underneath J. D. Leonard & Associates?

A Yes, sir.

Q Do you have a recollection that at some point that was a trade name which was substituted for J. D. Leonard and Associates?

A No, sir. I think it was in conjunction with it.

Q I would like to direct your attention now to

November 16, 1966, and ask you if on that day you had a conversation with Mr. Leonard concerning the Union Carbide Corporation and his relationship to it?

MR. TIGUE: The date, please?

MR. MAC DONALD: November 16, 1966.

A Yes, sir.

Q Will you tell the jury, please, what you recall of that conversation?

A We were discussing a small loan, as I recall, an addition to a loan, which for him would not have amounted to too much. He indicated at that time that he was about to sign a very large contract, I believe it was, with Union Carbide, and he stated that he was -- he stated that he was going to -- I believe the figure was a million dollars, it was going to be.

Q I show you Government's Exhibit 54 and ask you, if you would, what that document is.

A This is a memorandum for the file.

Q What were the circumstances under which -- who prepared it, first of all?

A I did.

Q Will you tell us under what circumstances you prepared that memorandum for the file?

A To record my conversation with Mr. Leonard.

MR. MAC DONALD: I offer that.

MR. TIGUE: No objection.

THE COURT: Received.

xx (Government's Exhibit 54 received in evidence.)

MR. MAC DONALD: May I read this to the jury, your Honor.

THE COURT: Yes.

(Mr. MacDonald read Government's Exhibit 54 to the jury.)

Q Mr. McIlwain, I am now going to show you Government's Exhibits 44 through 63, and ask you, with respect to each of them, whether or not you have previously examined them in my office and made certain red ink markings on each of those exhibits.

A Yes, sir.

Q Would you tell the jury, please, with respect, first of all, to the general practice and procedure at 37th Street Branch, what a teller does to a check which is presented for cash instead of for deposit to an account?

A The face of the check is put through what they call a Simplex machine, which records the number of the branch. 37th Street Branch would be 97.

They would then have a 37th Street Branch, and on the right-hand side would have the teller's number.

Underneath, just underneath that, would be the date that the check was cashed.

Q Does the teller make any additional notations on the reverse side of the check upon occasion?

A Yes, they break down the way they have handed out the money to the total.

Q By writing so many 5's, so many 10's, 20's, et cetera.

A Yes, sir.

Q Have you encircled on each of those exhibits the Simplex marking and the breakdown as you have just described?

A There is one here that is not.

Q What's the tag on that one?

A 47 and 50.

Q Does not.

A No, sir.

On 52 they did not put a breakdown on the back. 54.

Q Is what?

A Is not marked.

Q No marking of any kind?

A No. The rest are.

Q If an item was brought in for deposit as opposed to being presented for cash, the teller would not Simplex

stamp such a deposit; instead, take it into a cash drawer and microfilm it at day's end.

A Yes, sir.

Q Are cash items such as the ones before you, drawn on local New York City banks microfilmed as part of the teller's work?

A All cashed items are microfilmed.

Q How about deposited items?

A No, sir.

Q Finally, wouldyou tell the jury, please, if a person presents a check the use of the funds of which would be used to pay down a loan, is it a requirement that such funds, first of all, be shown on their personal account statements or can the funds go directly to a loan paydown without appearing on the personal statement?

A We don't -- it is not practice to accept a corporate check to pay down a loan. It does happen.

Q With regard to an official bank check made payable to a depositor --

A Right.

Q --which he wished to use to pay down a loan, would there be a necessity that those funds appear on the banking statement or would it be possible to simply reduce the loan on the ledger card and avoid the bank statement?

A We would reduce it on that basis.

Q I show you Government's Exhibit 81 for identification and ask you if you encircled in red on the back of two of these items, some markings?

A Yes, sir.

Q Would you tell us what it is that you encircled on those two?

A These were cashiers checks drawn on the Chase Manhattan Bank, and they were paid directly to the loan teller.

Q Is that the loan teller's stamp at the 37th Street Branch which you circled?

A Yes, sir.

Q I am going to ask you to compare, please, the liability ledger card for Mr. Leonard with respect to the various items which make up Exhibit 81, and ask you if in or about the times that appear as dates on those items there was a reduction in the amount of the loan even where there is no note teller's stamp on the back of the check?

A Yes, there is one here. Yes, there are three of them.

Q Can you give us the amounts, so we can identify those?

A 64,000, 16,000, 138,000.

MR. MAC DONALD: We have no further direct.

We would ask that the jury be permitted to examine the checks which the witness has identified, Government's Exhibits 44 through 60, at an appropriate time, your Honor.

THE COURT: Why don't we do it right now?

MR. MAC DONALD: All right.

THE COURT: Since there has been testimony given about them.

(Handed to the jury.)

MR. TIGUE: Your Honor, may we approach the bench while the jury is examining the documents?

THE COURT: You may.

(At the side bar.)

MR. TIGUE: In my never-ending hope for some meaningful 3500 material, I wondered if there was any additional for Mr. McIlwain?

MR. MAC DONALD: I haven't double checked. I don't think I made an additional entry on my notes before the one I gave to his Honor on this witness. There were only the notes that were marked 3508A. Let me check the marking.

(Pause.)

MR. MAC DONALD: Apparently I made some addi-

tional notes to myself, which I would just add to what has already been provided to the Court.

I guess it can be marked 3509A-1 or something. My representations are the same.

THE COURT: I will mark this 3508A-1.

xx (Government's Exhibit 3508A-1 marked for identification.)

I do not see that either A or A-1 are Jencks material.

MR. TIGUE: One other request I have, your Honor, while we have a minute: It is my suspicion that the alleged fink in this case -- this employee of Treadwell Corporation, that is to say -- I think there will be some testimony later on that this was a case where someone turned in Mr. Leonard. And the first stop the agents made after -- well, after three years, but the first time they looked into it they went to Treadwell Corporation. I might be a hundred percent wrong, but if it happened to be Mr. Olson I would think it would be 3500 material and would be Brady material.

MR. MAC DONALD: It was not Mr. Olson. I have never seen his name on any, at any rate.

(In open court.)

MR.TIGUE: While the jury is looking at that,

I would like to show Mr. McIlwain a book, which I will mark in a minute, which is an almanac.

MR. TIGUE: I am putting a tag on that book, your Honor, Defendant's Exhibit P for identification.

CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. McIlwain, Mr. Leonard over here -- do you recognize Mr. Leonard?

A Yes, sir.

Q He has been a customer of your bank for about 20 years, has he not?

A I believe so. I believe he came -- the account transferred to the 37th Street Branch from another branch. I couldn't tell you how long it was. It came there in '61, I believe, and there was sometime before that, I believe, at 32nd Street.

rd
75

Q Do you recall, or would it refresh your recollection if I suggested that he had an account there since 1952 and 1955?

A Not 37th Street, sir.

Q No. Let me show you Defendant's Exhibit @ for identification, and will you tell us if that refreshes your recollection as to how long he has been a customer of your bank.

A Yes. I say -- I had no dealings with him before I got there, in 1963, but that letter would speak for itself.

Q Right. Well, you have gathered together and produced a number of documents in connection with this case, have you not?

A What --

Q Bank statements and files --

A Yes.

Q Do you have the originals with you today, sir?

A The statements -- I don't know where they are. I don't know where they are. I haven't got them with me.

Q I think one of the interoffice memos you introduced was an original piece of yellow paper.

A That's correct.

Q Where are all the other original documents?

A The statements -- I don't know where they would be.

Q I don't mean the statements. I am talking about the credit files and the correspondence.

A Whatever it would be is in there.

MR. MacDONALD: You mean in your overcoat?

THE WITNESS: Yes.

MR. MacDONALD: Mr. Tigue --

MR. TIGUE: I think I might have to refer to it in a moment.

Q Is it fair to say, Mr. McIlwain, that in all your dealings you have found Mr. Leonard to be a person of integrity and responsibility and entirely competent to take care of his business obligations?

A Yes, sir.

Q Now, during the year 1968, the liability ledger shows that at various times Mr. Leonard borrowed some $200,000-plus; is that correct, sir?

A Yes.

Q And during the course of that year, the latter part of the year, those loans were paid off; is that correct?

A Yes, sir.

Q And over the years that Mr. Leonard has dealt with your bank there have been very, very substantial loans and business transactions, have there not?

A While I was there, there certainly were.

Q Some of them as high as $350,000 loans?

A Yes, sir.

Q As a matter of fact, your bank solicited him, did you not, to come in and borrow some money so he could pay his taxes on April 15th each year?

A I believe -- I believe we might have, yes.

THE COURT: Mr. Tigue, how long do you think you will be with this witness?

MR. TIGUE: I will be a little while, your Honor. I have to go into --

THE COURT: All right. We will take our mid-afternoon recess.

(Recess.)

Q Mr. McIlwain, do you have before you Defendant's Exhibit P, I believe it is, the book to your right?

A Yes, sir.

Q And do you recognize that as Skinner's Almanac?

A Yes, sir.

Q Is that sort of a standard banking almanac?

A I have never used it, myself. I assume it is, sir. I don't know.

MR. TIGUE: Well, I will offer page 18, on the left side.

MR. MacDONALD: We have no objection to the entire

book coming into evidence. To the extent that the offer is limited, we would offer the balance, just so that we have the entire thing in the record.

MR. TIGUE: I don't know what else is in there besides this page 18 at the moment, your Honor. I guess I would have no objection if it is relevant, but I don't know what the relevance of the balance of the book is.

I think for the moment, your Honor, I will just offer page 18, and I would like to think about the other two thousand pages.

THE COURT: Well, why don't you gentlemen come up here?

(At the side bar.)

THE COURT: For what reason are you offering page 18, Mr. Tigue?

MR. TIGUE: I intend to establish, your Honor, through this witness that the bank account referred to in the affidavit regarding foreign banks is this bank in Australia, and that they have correspondents in Switzerland, and I intend to ask this witness about his bank introducing Mr. Leonard to the bank in Australia and explain very briefly what a correspondent bank is. It will be the briefest of all testimony, your Honor.

MR. MacDONALD: Banque Populaire, which is the only

relevant Swiss correspondent bank, was masked --the name was masked on the other exhibit, on Mr. Tighe's objection.

THE COURT: Did this witness testify anything about Australia? This goes 'way beyond the scope of the direct examination.

MR. TIGUE: Well, it is his banking relationships that --

THE COURT: Just because an Australian bank has a Swiss correspondent bank doesn't make that bank relevant in this lawsuit. The First National City Bank, I assume, has a Swiss correspondent bank. The answer is, so what?

MR. TIGUE: Well, it may not be persuasive, but it would go to the weight. Maybe your Honor is not persuaded, but I want to show that there was an affidavit submitted to the Government which disclosed the existence of a foreign bank. If that bank had a branch or a correspondent bank in Switzerland, I think I have a right to bring that to the jury's attention and put the Government to their proof. They are attempting through circumstantial evidence to prove their case, and I am trying through circumstantial evidence to disprove it.

THE COURT: Mr. MacDonald, what do you say to this offer?

MR. MacDONALD: Generally there are at least two

other foreign banks who received letters of recommendation from the City Bank. The first thing I intend to do is to see if the Toronto Bank, for example, had a Swiss correspondent. That is why I offered the balance of the almanac. As long as we are going into banking relationships, I don't think I should be limited to just that one bank.

MR. TIGUE: Agreed.

MR. MacDONALD: I think, though, that there is no showing that the banks listed in Switzerland on that page have anything to do with this case.

THE COURT: Mr. Tigue, are you going to show that any transaction involving the Australian contract went through a Swiss bank?

MR. TIGUE: For the moment, your Honor, I am waiting to see what the Government proves in the way of their Swiss bank. They have a piece of paper from the First National City Bank which mentions a Continental National Bank. Frankly, your Honor, I haven't had a minute's time to find out if that is a correspondent bank and the transactions went through them.

THE COURT: Let me be sure that I understand. All that you want to show is that the Banque Populaire Suisse is a correspondent bank of an Australian bank? Is that all you want to show?

MR. TIGUE: Yes, your Honor, and through this witness I want to show the connection between the Australian bank and that Mr. Leonard was introduced to that bank and that Mr. Leonard allegedly said he had a loan from the bank in Australia.

Now, if I can argue from those facts that the loan, instead of coming from Sydney to New York, came from Sydney to Zurich to New York, I think I could prove that.

THE COURT: No. I think I will have to exclude Exhibit P.

MR. TIGUE: May I still lay a foundation that this witness introduced him to the Australian bank?

THE COURT: Yes, but I do not deem that it is relevant at this point to show that the Australian bank had a Swiss correspondent, and, in any event, it is beyond the scope of the direct examination.

Q Mr. McIlwain, did you introduce Mr. Leonard's firm to the Bank of New South Wales?

A Yes, sir.

Q And was the same thing done by your bank with the Australian and New Zealand Bank Ltd., Sydney, Australia?

A I believe so, sir.

Q Well, if you have any doubt about it, let me show you a part of your file, which has been marked as Defendant's Exhibit R for identification, and could you tell us, sir, if that refreshes your recollection as to whether or not that introduction was made.

A Yes, sir.

Q With respect to that yellow exhibit, I think it is Government Exhibit 64, you had a conversation with Mr. Leonard in November of 1966; is that right?

A Yes, sir.

Q In essence, he told you that while he wanted it kept in confidence, he wanted you to know that he was about to receive a large contract from the Union Carbide; is that right?

A Yes, sir.

Q Is that basically the sum and substance of the conversation in addition to the loan requirements that you mentioned on ywor direct examination?

A Yes, sir.

Q And the word "confidential" on the side of that memorandum, is that your handwriting?

A That is my handwriting, sir.

Q During the course of Mr. Leonard having his account at your bank, did you from time to time receive credit inquiries from other banks in addition to the two Australian banks I just mentioned?

A Yes, sir.

Q On direct examination I believe you described for us the Simplex stamp which appears on the checks I think to your left. Is that right, sir?

A Yes, sir.

Q The Simplex stamps are put on when a person comes in with a check and wants the cash. Isn't that correct?

A Yes, sir.

Q Isn't it fair to say that in this city maybe hundreds of thousands or perhaps millions of checks are cashed each day?

A I would say so.

Q Is another reason that a Simplex stamp is put on there: if a deposit is a split deposit?

A That is correct.

Q So there are two reasons why a Simplex stamp is

on. Are there others, sir?

A Those would be the only ones that I would know of.

Q Would you describe what a split deposit is in banking terms?

A A split deposit would be partial -- taking a check and partially depositing it to your account and taking the remainder in cash.

Q Do you have the Government's Exhibit 44 and the ones that follow that before you?

A Yes, sir.

Q Would you take a look a minute at Government's Exhibit 45 in evidence. Would you look at the reverse side.

A Yes, sir.

Q When the checks are cashed, sometimes the money is either given to the person who cashes the checks in currency or sometimes it is also given in Traveler's Checks, isn't it?

A Yes, sir.

Q Can you tell from the TC that is indicated on the back if some of that money was given in Traveler's Checks?

A It would indicate that it looks like $1963 was given in Traveler's Checks.

Q Would you please take a look at Government's Exhibit 47. That is a check in the amount of $37,000 from

Treadwell to the Leonard Process Company. Can you tell us whether that $37,000 check was cashed or whether it was deposited from looking at the document?

A I can't find it.

Q 47 the number is.

A It doesn't appear to be here.

Q Government's Exhibit 47.

A Here it is. I have it. They are out of order.

Would you want to ask me that question again, please?

Q Yes. Would you take a look at Government's Exhibit 47 and tell us whether that check was cashed or deposited.

A It appears that this check was deposited.

Q Would you also look at Government's Exhibit 50, please, Mr. McIlwain.

A I beg your pardon?

Q 50, please, which is a check for some $6400.

A Yes, sir.

Q Is there a Simplex stamp on yours? My copy does not reflect it.

A There does not appear to be a Simplex stamp on this check.

Q And then on the reverse part it says "Pay any bank,

First National City"?

A Right.

Q Is that the stamp that is put on it in the ordinary course of banks that are normally deposited?

A Yes, sir.

Q Could I ask you to go back for one minute, sir, that is the first one, Government's Exhibit 44.

A Yes, sir.

Q Can you tell us if that check was cashed from the handwriting on the back?

A It would appear to be cashed, yes.

Q Can you make out the date on the reverse side? The First National City Bank date. It looks like July 17. Is that the date?

A July 7 or 17. It's difficult to say.

Q Look on the left side of the reverse. I believe that one is clearer, stamped two times.

A Oh, right there, yes.

Q Would you say July 17 that one is cashed?

A Yes.

Q Would you take a look at Government's Exhibit 54, please. That is a check for some $8700.

A Yes, sir.

Q Can you tell us if that was cashed or deposited?

A This appears to have been deposited as a collection.

Q Is there a stamp on there from an Australian bank?

A Yes, sir.

Q And that check is dated February 20, 1968; is that correct?

A Yes, sir.

Q We have one in evidence which is called Defendant's Exhibit O, which has my handwriting on it. I wish you would just ignore that. Take a look at that and tell us if that check was cashed or deposited.

A Which one?

Q The one in the middle here. It is dated July 24, 1969, and the reverse, Mr. McIlwain -- excuse me -- is on the second page in the center.

A It would appear to have been deposited.

Q One last question, Mr. McIlwain. With respect to the payment of loans, is it an equally prevalent practice that sometimes people deposit the money into their account and draw it out, or is it more often that people come in with a check and pay off whatever their loan is to the First National City Bank?

A It would depend on what type of an account it was.

Q I mean, the point is -- withdraw it.

The question is: Is there anything unusual about a person coming in with a check and paying off a loan he has to First National City Bank?

A If it were a proprietorship or a personal check, absolutely not.

Q Right. Thank you.

MR. TIGUE: No further questions.

MR. MacDONALD: Your Honor, I overlooked two checks in my direct examination. With leave of Court, could I ask the witness to identify them?

MR. TIGUE: That is all right.

THE COURT: You may.

REDIRECT EXAMINATION

BY MR. MAC DONALD:

Q I hand you Government's Exhibits 4 and 6 for identification and ask you if you placed the red markings on those checks in the same fashion as the earlier ones at my request yesterday or the day before in my office.

A Yes,I did.

Q And it is the same Simplex marking and breakdown as before.

A Yes.

MR. TIGUE: What are you talking about?

MR. MacDONALD: 4 and 6.

A Yes.

Q Mr. Tigue asked you if Government Exhibit 54, the one with the Australian stamp on it, was deposited, and I thought you answered yes, this appeared to be a deposit item.

A It's a collection item.

Q A cclllection item. This never touched your bank, did it? You weren't referring to any First National City Bank markings?

A No.

Q Can you tell from the back of that check in what bank that check was first placed, or from the front?

A No, sir.

Q In a sense, all checks are collection items, are they not? Perhaps you can tell me what you meant by a collection item.

A Instead of going through as an ordinary deposit, this check was put through as a special collection.

Q What is the difference?

MR. TIGUE: Which check?

THE COURT: 54.

A Possibly because it may have been paid overseas, I don't know.

Q By what markings or lack of markings can you tell

whether it was a collection item or put through for deposit?

A It has a collection stamp on it.

Q Which runs the length of the check?

A Let me look at this again.

I really can't tell you. It came through Australia somehow. It's got an Australian stamp on it.

Q And ended up at the Chemical Bank, the bank on which it is a draft?

A Yes, sir.

MR. MacDONALD: We have nothing further. Thank you very much.

MR. TIGUE: No questions, your Honor.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. MacDONALD: I call Miss Bardes.

M A R I O N B A R D E S, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MacDONALD:

Q Miss Bardes, will you tell the jury, please, what your current occupation is?

A I do some tax work.

Q In 1967 and 1968 did you have the same occupation?

A Yes.

Q Were you associated with any accounting firm during that period?

A Yes.

Q Which one?

A Leskowitz, Brower & Driver.

Q In that connection did you have occasion to do any work on the income tax returns for Mr. Jackson D. Leonard?

A I worked on the work sheets.

Q I show you Government's Exhibit 92 for identification and 77 in evidence, and ask you if you can identify thos exhibits, please.

A They are in my handwriting.

Q Are they the schedules and papers that you prepared in connection with working on that return?

A Yes.

Q I show you Government's Exhibit --

MR. MacDONALD: We offer Government's 92 for identification.

MR. TIGUE: Is this being offered?

MR. MacDONALD: Yes.

MR. TIGUE: May I ask a question on the voir dire.

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q Is it Miss Bardes?

A Miss Bardes.

Q Miss Bardes, I am Jack Tigue, I am Mr. Leonard's lawyer, and I would like to ask you a couple of questions about Exhibit 92, particularly the information that appears in columnar form near the end.

A That is not my handwriting.

Q Do you know where that handwriting came from?

MR. MacDONALD: Did you identify the number on that page?

MR. TIGUE: It begins on 1922. You shook your head, Miss Bardes, but the reporter cannot take that down.

THE WITNESS: I beg your pardon.

A No.

Q The rest of the folder contains your handwriting, does it?

A That isn't my handwriting.

Q That is number 1936.

A This is my handwriting.

Q That is 1937. And then the letters of course are in nobody's handwriting.

MR. TIGUE: I have no objection, except to the

columnar figures, which I don't believe the witness has sufficiently authenticated at this point, your Honor. The rest of it I have no objection to.

THE COURT: Let me see.

MR. MacDONALD: I think conceivably there -- well, all right (handing to the Court).

THE COURT: It is these pages 1922 and 1923 that you are objecting to, Mr. Tigue.

MR. TIGUE: The columnar ones, yes, your Honor. All of those pages. I think there are quite a group, if I might approach the bench.

(At the bench).

THE COURT: Lay a foundation, Mr. MacDonald, by asking further questions.

MR. MacDONALD: I shall do that.

(In open court)

FURTHER DIRECT EXAMINATION

BY MR. MacDONALD:

Q Miss Bardes, can you identify these pages as apparently being expense accounts for the calendar year, each of the twelve months, together with an underlying breakdown on a monthly basis of each such account and the total?

A Yes.

Q Did you prepare the second page of Government's

Exhibit 77?

A Yes.

Q Being a recap of expenses for Schedule C in your own hand?

A Yes. This is my handwriting.

Q Can you tell the jury where you obtained the figures in the expense account nomenclature, that is, the numbers and the names?

A We got it from the cash book.

Q Do you recall what the cash book looked like with respect to those figures?

A No, frankly I do not.

Q Do you recognize these pages as being a reproduction of the cash book pages? For example, let us take the month of January in Account 603.

A Yes.

Q Do you notice similarity in the account entry?

A Yes.

Q In this Xerox page?

A Yes.

MR. MacDONALD: We would press the offer with respect to the Xerox --

THE COURT: I am not quite clear.

Miss Bardes, are you saying that those pages are

copies of the cash book entries, cash book pages?

A I would think so, sir, yes.

THE COURT: In other words, you used the original of those pages in the preparation of Exhibit 77?

THE WITNESS: Yes.

THE COURT: The objection is overruled.

MR. TIGUE: Your Honor, may I ask one or two questions on the voir dire?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q You say you think so. Do you know if these are the cash book pages of Mr. Leonard's business?

A I am not a hundred percent sure. I can't give you a direct answer to that.

Q Could you tell us where you got those columnar forms from, ma'am, the ones we just spoke about?

A Well, that isn't in my handwriting, so I don't know where that came from.

MR. TIGUE: I press my objection, your Honor. I don't believe this witness can lay the foundation. I think the person who got those could.

A This is in my handwriting.

MR. TIGUE: Yes. That is already in evidence.

THE COURT: Has it been established that those pages were used by this witness in the preparation of the return? I thought the record showed that.

MR. TIGUE: I don't think that is clear, your Honor. I think Mr. MacDonald asked the question and the witness said --

MR. MacDONALD: I really think it --

THE COURT: I am showing you from this exhibit, 92 for identification, pages that have been stamped 1922 through 1935. Did you make use of those pages in the preparation of your columnar work sheet, which is Exhibit 77?

THE WITNESS: I would say yes.

THE COURT: You did.

THE WITNESS: Yes.

THE COURT: And those were furnished you by someone --

THE WITNESS: Yes.

THE COURT: -- for that purpose?

THE WITNESS: Yes.

THE COURT: And then Exhibit 77 which you prepared was used in the preparation of the final tax return?

THE WITNESS: That is my handwriting, yes.

THE COURT: I overrule the objection.

(Government's Exhibit 92 for identification was received in evidence.)

Q Miss Bardes, I direct your attention to the black covered book marked Government's Exhibit 87 for identification and ask you if you can identify that as an exhibit and tell the jury what it is, please.

A Yes; it's the book of accounts.

Q For what business?

A Leonard Processing?

Q Were you the bookkeeper for a period of time in 1968 for Leonard Process Co., Inc.?

A Yes.

Q Would you look at the tag marked 87-A for identification, up at the top? That tag. Tell us, please, if you can identify that specific page of Exhibit 87.

A It's my handwriting.

Q And is that a recap --

MR. MacDONALD: Withdrawn.

Q Is that a ledger, a cash receipts ledger, for the business?

A Yes, sir.

Q For the period ending January 31, 1969?

A Yes.

Q Is the page immediately following the page which

has been specially tagged a first or original cash receipts page and the page which has been tagged a second draft or one that you did after the first one had the corrections that are indicated put on it?

A Yes.

Q Now, would you look at the packet of material next to you, which has been marked Government's Exhibit 88 for identification, and will you tell us if those are the check stubs and checks for that same corporation, from which you prepared the books, Exhibit 87?

A Yes.

MR. MacDONALD: I would offer both exhibits in their entirety.

MR. TIGHE: May I ask some questions?

THE COURT: You may, but first, gentlemen, will you come up here for a moment.

(At the side bar:)

THE COURT: You had left over the offer of an exhibit for Agent Laski --

MR. MacDONALD: Mr. Tigue and I agreed that Agent Laski would not be questioned further on that exhibit. As to authenticity, there are other authors, and the objection can be waived on that ground. So Mr. Tigue has waived his objection, and we are sending him back to California.

THE COURT: All right. I wanted to make sure we hadn't sent Mr. Laski back until you did not need him any longer.

MR. TIGUE: How long does your Honor intend to sit this afternoon?

THE COURT: Four-thirty.

MR. MacDONALD: I have one other witness of the same type, who will testify to records --

THE COURT: We can take that witness. We will sit a little longer if necessary.

MR. TIGUE: Your Honor, Miss Bardes is the witness who prepared the 1967 tax return. There is an enormous amount of papers, two bagfuls. I know the Government is trying not to call Mr. Leskowicz --

THE COURT: Well, we can certainly have --

MR. TIGUE: What is he going to put in?

MR. MacDONALD: The '68 1040 he prepared.

THE COURT: That is going to take some time, too, I take it.

MR. TIGUE: Yes, your Honor.

THE COURT: He will have to return tomorrow.

MR. MacDONALD: All right, your Honor.

(In open court:)

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q Miss Bardes, we have two exhibits 87, the whole book, and 87-A, which is one page. Can you tell us whose handwriting is on those exhibits? Speak up, so the reporter can hear you.

A The first page is my handwriting, with the exception of this item (indicating).

Q -- which says "Chinook Chemical"?

A Yes.

Q And the page that has been rewritten: whose handwriting is on that page?

A It's all in my handwriting,with the exception of Chinook and this J. A. Leonard.

Q Now, the entire book itself contains a number of years, does it not? It goes right up to the current year?

A I don't know if it goes to the current year.

Q I see 1974.

A Well, I wasn't involved in that.

Q Can you show us where the general journal is, in the beginning? Is that in the front there?

A I don't know where it is.

Q These would be the journal entries on J-3?

A Yes.

Q And can you tell us whose handwriting is on J-3?

A I don't know.

MR. TIGUE: I have no objection to the relevant years, your Honor, but I think that a book which has from 1968 to 1974 -- not all that is relevant to this case, and I would object to the years which are not in issue, namely, everything after January 31, 1969.

MR. MacDONALD: I don't think I am prepared to take it apart at this time. I think it is a business record in its present form. If any of the matter is irrelevant, then there will be no occasion to refer to it. If it is relevant, it is a business record nevertheless and can be and ought to be referred to at the appropriate time.

MR. TIGUE: It certainly is a business record -- I would agree to that -- but it is highly irrelevant, except for those two years.

THE COURT: Well, to the extent it is relevant, it will be admitted in evidence.

(Government Exhibit 87 for identification was received in evidence.)

THE COURT: Lest I have made a confusing statement, the entire exhibit is in evidence, and to the extent that it is relevant, anybody may refer to it.

MR. TIGUE: Now, your Honor, with respect to Exhibit

88, which is the checks and the checkbook, the checks are all for the two years, and I have no objection to those, and the checkbooks -- there are two blank checkbooks, one of which has checks which go into the latter part of 1969, and I would have the same objection with respect to that part of the book that does not relate to the years in question.

THE COURT: Same ruling.

(Government's Exhibit 88 for identification was received in evidence.)

BY MR. MacDONALD:

Q I place before you Government's Exhibit 76 in evidence, being copies of bank statements, and I direct your attention to the top page of 77, the Schedule C receipts, and I ask you if you prepared your schedule from the original or another copy of Government's Exhibit 76.

A Yes; I did.

Q Can you identify Government's Exhibit 98 for us, please, as something that you prepared in the past or worked on?

A These are my work sheets, the hours I put on on different accounts for the firm of Lefkowicz, Brower & Driver.

Q And do each of those pages contain a lettered entry indicating hours and charges?

A Yes.

MR. MacDONALD: We would offer 98 for identification into evidence.

MR. TIGUE: I have no objection to Government Exhibit 98, your Honor.

THE COURT: Received.

(Government Exhibit 98 for identification was received in evidence.)

MR. TIGUE: Your Honor, I think it will take me some time to get these documents organized. May I have a moment to do that?

THE COURT: Well, it is near the recess time.

Miss Bardes, I think I will have to ask you to come back tomorrow morning at ten o'clock.

We will recess for the day, ladies and gentlemen, and we will resume at ten o'clock tomorrow morning.

Don't discuss the case with one another, and don't speak about it at all to anyone else.

(Adjourned to January 16, 1975, at 10:00 a.m.)

- - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Mortimer Laski (Resumed)		278	368	377
Richard F. Olson	378	382		
Charles Howard McIlwain	386	398	412	
Marion Bardes	414			

EXHIBIT INDEX

Defendant	Identification	In Evidence
F		296
D		368
E		376
N		382
O		383

Government

44 through 48		381
50 through 63		381
78,82		388
54		392
3508A-1	397	
87		425
88		426
98		427

UNITED STATES OF AMERICA

vs. 74 Cr. 599

JACKSON D. LEONARD

January 16, 1975
10:00 a.m.

(In the robing room.)

MR. TIGUE: This will be brief, unlike yesterday.

Your Honor, unfortunately, Mr. MacDonald has all the originals of the work papers and there's literally a stack this high. And I just need a few specific numbers, so if I could have just five or eight minutes to pull out the originals Mr. MacDonald gave me -- I'm not criticizing him because he did give me a lot of exhibits --

THE COURT: How soon will you be getting to those?

MR. TIGUE: Almost immediately. She's on cross examination.

THE COURT: Let's do it quickly. I have been importuning this jury to get here on time and I don't like to keep them waiting.

(In open court, in the absence of the jury.)

THE COURT: Are you going to be through soon? Can you start with those two?

MR. TIGUE: I think I can.

THE COURT: All right. Bring the jury in, and we will pick it up as we go along.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen.

Mr. Tigue? You may proceed.

M A R I O N B A R D E S, Resumed.

THE CLERK: Miss Bardes, you are still under oath.

CROSS EXAMINATION

BY MR. TIGUE:

THE COURT: Ladies and gentlemen, in the second or two we have here, so that you can make plans concerning the future, it would appear that we will be sitting into Monday and Tuesday of next week. Also, tomorrow we will sit from 9:30 until 1 and you will then have the balance of the day off, so you can plan to use Friday afternoon otherwise.

Q Good morning, Miss Bardes.

A Good morning.

Q Were you the person who prepared the 1967 income tax returns for Mr. Leonard?

A Personal return?

Q Yes, ma'am.

A No, sir.

Q Do you know who did that?

A No, sir.

Q Do you know if it was someone in the firm of Leskowicz, Driver and Brower?

A I would assume so, yes.

Q But you really don't have your own personal knowledge?

A No.

Q I believe yesterday there was marked an exhibit --

MR. TIGUE: This is not in evidence, your Honor, but I thought it was. Is that in evidence, madam clerk?

I see there's a date stamped on there.

THE CLERK: Yes, it is.

MR. TIGUE: Thank you.

Q Exhibit 92 is a file folder which you identified yesterday, ma'am?

A Yes.

Q And did you prepare the top document which says--

A I did this, yes, sir.

Q Let me just identify it for the record. That's the form 1040 for 1967 and there are some numbers on there, is that right?

A Yes, that's right.

Q That return says "Leonard" at the top, is that

right?

A Yes, sir.

Q Could you tell us where you got the information to put the numbers on that return?

A Honestly, I can't tell you. I would assume that I got them through Mr. Leskowicz.

Q Could you tell us, please, what that file is that you have before you?

A Apparently Mr. Leonard's 1967 tax returns.

Q That would be a copy, Miss Bardes?

A I would assume so, yes.

Q Now, if I could show you Government's Exhibit 1 in evidence, could you tell us if your handwriting appears on there, please? That's the tax return for 1967.

A That's not my handwriting.

Q Does your handwriting appear anywhere on that page?

A No, sir.

Q Can you tell us whose handwriting that is? Let's take the numbers first, please.

A No, I really can't.

Q What about the signature in the lower righthand corner, where it says Leskowicz, Brower & Driver. Do you recognize that handwriting, madam? Would that be Mr. Driver

or Mr. Brower, D-r-i-v-e-r?

A Well, it would have to be somebody in that firm but I can't tell you.

Q You don't recognize that handwriting?

A No, I can't.

Q I believe yesterday Miss Bardes, that some of your time sheets were marked as an exhibit and introduced in evidence, if I can find those.

Can you tell us what work was done in connection with those time sheets?

MR. TIGUE: I don't believe I have the originals.

MR. MAC DONALD: Here they are.

Q This is Government's Exhibit 98. Are those your time sheets, madam?

A Yes.

Q Was that in connection with the preparation of some financial statements for the Leonard Process Company?

A Yes.

Q Let me show you these Defendant's Exhibits S, T and U, and would you take a minute, please, and examine each of these. Will you start with the Exhibit S.

Have you had a chance to look at those, madam?

A Yes.

Q Could you tell us -- may I see this -- Defendant's

Exhibit S are the financial statements which you had a hand in preparing, is that right?

A I would say I did, yes.

Q And is Exhibit T the engagement letter from Mr. Leonard to the firm, to ask to prepare the financial statements?

A Yes.

Q And is Defendant's Exhibit U Mr. Leskowicz's draft of Defendant's Exhibit S?

A This is Mr. Leonard's -- no, Mr. Leskowicz's.

Q Mr. Leskowicz's?

A Yes.

MR. TIGUE: I offer these, your Honor, Defendant's Exhibits S, T and U.

MR. MAC DONALD: May I ask the witness a few questions.

VOIR DIRE EXAMINATION

BY MR. MAC DONALD:

Q Miss Bardes, Exhibit U is the draft in Mr. Leskowicz's handwriting.

A Yes.

Q -- of the cover letter as well as the financial statement itself?

A Yes.

Q And is S the typed version of that financial statement, together with the typed version of that cover letter?

A Yes.

Q It is Mr. Leonard's letter?

A That's right.

Q To Mr. Brower?

A That's right.

Q To Mr. Brower?

A That's right.

Q Of the firm?

A Yes.

MR. MAC DONALD: May I have the time sheets?

Q I note that the date of the letter to Mr. Leonard is July of '68?

A Yes.

Q And the date of the draft -- the draft is undated. The time sheets that you have identified as yours, do -- they end on February 21, 1968 and the next entry is for August and September of 1968 and my question is, is it your best recollection that perhaps Mr. Leskowicz worked principally in February on these balance sheets and that you may -- do you remember what contribution you had to their preparation?

A There's a question in my mind -- possibly some of these -- these sheets, time sheets, are missing.

mph 1 Bardes-cross

T1B

Q In any event, the three exhibits that are offered are each authored by somebody other than yourself?

A Yes.

Q Mr. Leskowicz drafted them, and you typed them?

A Yes.

MR. MacDONALD: Your Honor, we would object, because the author is not present with respect to any of these three exhibits, and we would ask that they be excluded at this time, that is, through this witness.

THE COURT: Come up to the side bar.

(At the side bar.)

THE COURT: Mr. Tigue, for what purpose is this being offered?

MR. TIGUE: Your Honor, it relates to Government Exhibit 29, which was introduced in evidence yesterday. You will notice that the Schedule C has identical numbers to those which appear on the financial report, which is Defendant's Exhibit S.

I think the witness has identified these as documents produced by the firm, and she has identified Mr. Leskowicz's handwriting.

The gross receipts are $161,000, which is identical to the figures shown in Government's Exhibit 92, Schedule C. This relates directly to her testimony.

MR. MacDONALD: The tax return itself was filed in June of 1968, and this was a financial statement prepared thereafter. So there is another copy with identical figures.

MR. TIGUE: It was finally typed and signed two weeks thereafter, your Honor, almost contemporaneous with it.

Over my objection, your Honor, the government got Exhibit 92 in. I think she has laid the proper foundation for this.

THE COURT: Mr. MacDonald, is there any question that this is authentic?

MR. MacDONALD: I don't doubt that Mr. Leskowicz authored the writing on U, and I suppose it is accurately typed onto S. I really haven't seen this before today.

Is this the same as the return? That's the draft, but there is a variance in that expense portion.

MR. TIGUE: Of course.

The exhibit is in evidence. I think I will have to explain where the information came from. I think Government Exhibit 92 got in evidence over my objection, and with this foundation it now appears that the witness doesn't know anything about the tax return and had nothing to do with it.

Now, I am trying to explain that it relates directly

to the income items which are shown on the tax return in Government Exhibit 92. It is directly related. And this is cross-examination, your Honor.

MR. MacDONALD: Judge, I think it is important, too, that the jury appreciate the character of this letter as opposed to other letters which this firm might have drafted. That is now a certification letter, and there is no opinion.

MR. TIGUE: I don't claim that it is.

MR. MacDONALD: And unless I am able to ask Mr. Leskowicz why it was more limited than the engagement letter requested -- I am not going to be able to cross-examine the author on the access to information. This is the only purpose that is being served, that not only did the taxpayer sign the tax return, but he also certified this balance sheet.

MR. TIGUE: With respect to this, he didn't ask for a certification. This is cross-examination of a government witness who puts him into the very tax returns in question. It is directly related to the indictment and the bill of particulars. This is cross-examination of the accountant who had a hand in preparing the tax return.

MR. MacDONALD: This was prepared two weeks after the tax return was prepared.

MR. TIGUE: The same thing has to do with respect to an affidavit, which was filed some year after the tax return was filed. She was asked if she was the bookkeeper and what work she did, your Honor. I think the foundation has been laid.

MR. MacDONALD: Will you offer it without the letter? We don't dispute --

THE COURT: I would admit the balance sheet, but not the letter. That is an expression of opinion by Mr. Leskowicz.

MR. TIGUE: It sure is.

THE COURT: I know, but there is no foundation laid by her as to the validity of Mr. Leskowicz's opinion.

MR. TIGUE: I think the foundation is clearly laid. She has identified it --

THE COURT: As a letter, but that doesn't necessarily mean --

MR. TIGUE: On the letterhead of the firm.

THE COURT: Yes, but it is a self-serving statement of the firm.

MR. TIGUE: I would have to agree with that, but it is against their interest to make that statement, because he could be sued for that. It doesn't certify --

THE COURT: Do you contend that Miss Bardes can stand

behind Mr. Leskowicz's opinion as to the accuracy of this examination? Is she a competent witness to say, "I know that this examination is a valid one and was limited to verification of income and expenses on a cash basis, that cash expenses were substantiated by actual cancelled checks and other supporting data?

MR. TIGUE: I have never seen her before, your Honor. I don't know what she will say.

THE COURT: Well, it seems to me that this letter is inadmissible on the state of the record.

MR. TIGUE: Well, I do take exception to your Honor's ruling. I think the foundation is quite sufficient.

THE COURT: I rule against you on that. I will admit the financial statement as being a statement prepared by the accounting firm, and I think the letter on this record is inadmissible at this time.

MR. MacDONALD: The same applies to T also, the letter from Mr. Leonard.

MR. TIGUE: Oh, no.

THE COURT: Let's look at it.

Why is T admissible?

MR. TIGUE: It explains how Defendant's Exhibit S, which is now in evidence -- at least with respect to the income -- how it came to be, who asked her that it be

prepared. She has identified it as the engagement letter to do this work. She has testified about it. I can cross-examine her.

MR. MacDONALD: But not the author of the engagement letter.

MR. TIGUE: That happens in every document. I didn't generate the Treadwell checks. I had no opportunity to cross-examine the person who did. It seems to me that is an irrelevant argument.

THE COURT: It seems to me this letter is inadmissible as well. On what theory does Mr. Leonard's own letter of a request for something become an admissible statement of fact?

MR. TIGUE: It is part of the business records of the firm.

THE COURT: That isn't so, Mr. Tigue. This letter is not kept, prepared or kept in the regular course of business under the shopbook rule.

MR. TIGUE: It doesn't have to be prepared, your Honor. It has to be kept. Those holes --

THE COURT: No. It has to be in the regular course of business to keep this type of instrument. This is a request of an accountant to do something, and he states what he wants. Maybe the statements are genuine, but --

MR. TIGUE: You mean a letter like this, kept in a business file?

THE COURT: You mean, affidavits end up in such a file?

b2 MR. MacDONALD: Your Honor, I think it is in Title 28.

MR. TIGUE: I read it this morning, your Honor.

THE COURT: Has to be made as a memorandum or record of an act, transaction or event made in the regular course of business.

Now, it isn't the regular course of business for Mr. Leonard to write his accountant. This refers to things done every day, as a routine.

MR. TIGUE: That is what this is, your Honor.

THE COURT: No. I am sorry to say I don't see that, so I am going to exclude T on this record.

(In open court.)

MR. TIGUE: So, your Honor, S is admitted, just as to the statements.

THE COURT: And the yellow sheets. The draft-- U, the financial statement, is admitted, and the financial statement of S is admitted.

MR. TIGUE: This is admitted on page 2, and this is also admitted.

xx (Defendant's Exhibits S and U received in evidence.)

T2a MR. TIGUE: With the limitations your Honor set forth.

THE COURT: Yes.

MR. TIGUE: May I just briefly exhibit Defendant's Exhibit S in evidence, your Honor? That is just the one page.

THE COURT: Surely.

(Mr. Tigue read to the jury from Defendant's Exhibit S in evidence.)

BY MR. TIGUE:

Q Mrs. Bardes, may I show you Defendant's Exhibit S, which I just read, and could you tell us what you did in connection with that examination? Now, don't read anything, please, but Exhibit A, which is in evidence -- I mean you may read it to yourself, but don't read it out loud. Just take a look at that first page and tell us what work you did, if any, in connection with the preparation of that statement and the first page of the exhibit.

A I believe that as far as the statement of income and expenses are concerned that I went through the books of the Leonard Process Company and worked up these figures on income and expenses.

Q If you look at page 2 there, the examination you conducted, did that include the verification of income and

expenses on a cash basis?

A Yes.

Q And were the expenses substantiated to the actual cancelled checks and the other supporting accounting data?

A To the best of my knowledge, yes.

MR. TIGUE: I will offer the balance of Defendant's Exhibit S, your Honor.

THE COURT: Mr. MacDonald?

MR. MacDONALD: Having to track the language, I am not sure that that nevertheless makes the opinion expressed admissible, your Honor.

MR. TIGUE: There is no opinion.

THE COURT: Come up to the side bar.

(At the side bar)

MR. TIGUE: There is no opinion expressed, your Honor.

(In open court)

THE COURT: Mrs. Bardes, you just stated what you did.

THE WITNESS: That's right.

THE COURT: Did you inform Mr. Leskowicz of what you had done?

THE WITNESS: Yes, sir.

(At the side bar)

THE COURT: All right. I will admit the letter in evidence.

(In open court)

THE COURT: The objection is overruled.

Is that the identical letter in draft?

MR. TIGUE: Yes, your Honor.

THE COURT: Same ruling.

THE CLERK: That has already been marked Defendant's Exhibit U in evidence.

MR. TIGUE: I would like to read page 1, if I may.

THE COURT: You may.

(Mr. Tigue read to the jury from Defendant's Exhibit U in evidence.)

BY MR. TIGUE:

Q Now let me show you Government's Exhibit 1 again, ma'am, and would you tell us, if you know, how that income tax was prepared?

A I haven't any idea.

Q Do you know who did in fact prepare it?

A I do not.

Q After it was prepared, do you know what happened to it?

A I do not.

Q After income tax returns are prepared at the firm of Mr. Leskowicz, is it their practice that the return is reviewed by one of the accountants, one of the partners?

THE COURT: You are talking about what time?

MR. TIGUE: During the period of 1967, '68 and '69.

A I honestly can't tell you, because I wasn't there full time. I just did odds and ends of jobs that Mr. Leskowicz asked me to do.

Q I remember yesterday you were asked if you were the bookkeeper for a period of time for the Leonard Process Company. Actually you were always an employee of Mr. Leskowicz, were you not?

A That's right.

Q And he would ask you to go to Mr. Leonard's office or the books would be brought to your office and you would write them up, is that right?

A No. I wrote them up in Mr. Leonard's office.

Q Right. But that was the extent of your connection with the books of the Leonard Process Company.

A That's right.

Q And do you know who dealt with Mr. Leonard in connection with his income tax returns?

A I would think Mr. Leskowicz.

Q Was Mr. Leonard a client of Mr. Leskowicz as

opposed to Mr. Driver or Brower?

A That I don't know.

Q Can I show you, please, Defendant's Exhibits V, W and Z and could you identify for us whose handwriting appears on those, one at a time, please?

A Exhibit W looks to me to be in Mr. Leskowicz's handwriting.

Q And would you please take a look at Defendant's Exhibits V and Z, and I would ask you the same question.

A The handwriting looks like Mr. Leskowicz's, but the numbers I can't --

Q I see. The numbers are perhaps different, but the handwriting is Mr. Leskowicz's.

A That's right.

MR. TIGUE: I have no further questions of Mrs. Bardes, your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. MacDONALD:

Q Mrs. Bardes, do you know, from conversations with Mr. Leskowicz or Mr. Leonard, or anyone else for that matter, for what purpose Exhibit S was prepared back in July of 1968?

A I can't recall any particular conversations with anybody about it. I really can't answer that.

Q You don't.

A I don't know.

Q And it is true, is it not, that it was prepared, at least as is indicated, on July 2, 1968, some three or four weeks after the preparation of Government Exhibit 1, the income tax return dated June 12, 1968?

A I would assume so, yes.

Q State certified accountants are licensed and are entitled to express opinions on financial statements, are they not?

A Yes, sir.

Q And are you such a state certified accountant entitled to express an opinion?

A No.

Q Is Mr. Leskowicz?

A I would believe so, yes.

Q Otherwise he wouldn't say "CPA" under his title.

A Right.

Q And there is some standard language, is there not, which accountants sometimes employ in expressing opinions about the accuracy of financial statements?

A Yes.

Q I am not sure I am quoting right. Correct me if I am wrong. Do accountants sometimes say that they have

examined the books and records and they have satisfied themselves that they are made in accordance with generally accepted accounting principles?

b2 A That's right.

Q And that language is sometimes employed in opinion letters which accountants draft.

A That's right.

Q And they then conclude by saying that the attached balance sheet fairly expresses the financial condition in accordance with such principles, or words to that effect?

A Yes.

Q This letter does not contain any of that language, does it?

A No.

MR. MacDONALD: We have nothing further, your Honor.

MR. TIGUE: Nothing, your Honor.

THE COURT: Thank you, Mrs. Bardes. You may step down.

(Witness excused)

EMIL A. NOTHOFER, called as a witness by the Government having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Nothofer, would you tell the jury what your occupation is, please?

A I am a public accountant.

Q And are you employed by a firm of accountants?

A Yes.

Q What is the name of that firm?

A Leskowicz, Brower & Driver.

Q Where are they located?

A 274 Madison Avenue, New York City.

Q How long have you been employed by Leskowicz, Brower and Driver?

A Six years.

Q And have they always conducted their business at that address?

A No, sir.

Q During the time that you were there did it move from one to another?

A From one place to another, yes.

Q Would you tell us what the earlier address was?

A The earlier address was on, I believe, 47 West 47th Street.

Q But still in New York?

A Yes, sir.

Q Drawing your attention to --

THE COURT: Mr. Nothofer, would it be 49 West 45th Street?

THE WITNESS: I'm sorry. 49.

THE COURT: 49 West 45th?

THE WITNESS: I knew it was around there.

Q Drawing your attention to August of 1969, did you do some work in that month on behalf of Mr. Leonard, a client of the firm of Leskowicz, Brower and Driver?

A Did I do work?

Q Yes.

A Yes.

Q Do you recall what that work was in August of '69 for Mr. Leonard?

A Yes. It was his personal income tax return.

Q I would like to show you what has been marked as Government's Exhibit 80 for identification and I would like you to look through that exhibit and tell us if you recognize the writing on -- first of all, is that in two portions, the top half being a penciled draft of the 1040,

and the bottom half being schedules and other handwritten material?

A Yes, sir.

Q Would you address yourself now, please, to the 1040 form and tell us whose penciled writing appears in the various blanks in that exhibit?

A That is my handwriting.

Q Page 2?

A Yes, sir, that's mine.

Q Next page?

A That is an extension. That is the typed report. I didn't have anything on that.

Do you want me to go page by page.

Q Please. Identify those pages that contain your handwriting.

A I see. The next page is not mine. The next page is not mine. Not mine. That's typed and not mine. Yes, that's mine, Capital Gains. I am up to Schedule D.

THE COURT: What is down in the bottom?

THE WITNESS: I don't know what that is.

THE COURT: Use that to identify the page.

THE WITNESS: I'm sorry. 1736. That's mine.

1938, that's all my handwriting, except for the portion by the stamp number.

Q Is that the schedule C?

A No, sir. That is the subsidiary schedules for interest and miscellaneous deductions.

Q Yes, sir.

A And schedule -- 1739 is mine also.

1740 is my handwriting. 1741, 1742 also mine, 1744 also mine, 1743 also mine, and 1745, 1746 is a blank, 1747 is also mine, and 1749 contains none of my handwriting.

Q Is that the beginning of --

A Sir?

Q I'm sorry. Keep --

A I'm sorry.

Q 1749 does not have your handwriting?

A 1749 does not have any of my writing on the paper.

1750 does not have any of my writing on it.

Q Let me ask you about 1750. Is that the end essentially of the previous page, the end of the draft return and its various components, and 1750 begins a different kind of document?

A I believe 1747 is the actual end of the return.

Q All right.

A 1749 is a notice from the Internal Revenue about, evidently, some difficulty on the return, overpayment.

Q All right.

A Then comes 1750 becomes, is the start of, evidently, the work papers, the back up work papers for the return.

Q What did you put to the documents from 1750 through the end of the exhibit in the preparation of the draft material which you've identified as your own?

A I would say that all this material is what essentially was used to prepare the tax return.

Q The income portions? All those are income items, are they not?

A Expenses, see detail attached. There is provision for expenses and their income --

Q What is the number of that page?

A That is for schedule C evidently, expenses -- 1752, Exhibit 1752.

Q All right. Do you recall who provided you with that packet of materials that you've identified in the fashion you have which was employed in the preparation of the draft return?

A Well, I believe the procedure would be that it would be obtained from Mr. Leonard by one of the partners in our firm and then handed down to us to prepare the tax return from the information.

MR. TIGUE: I object to that, your Honor, and move to strike the answer. It is not responsive. He was asked what did happen and he said what the normal procedure was.

THE WITNESS: I'm sorry.

THE COURT: All right. To this specific question, the objection is sustained and the answer is stricken.

Go ahead.

Q Do you have a recollection of how you received that packet in this case?

A My recollection? I don't know if I can deviate--my recollection would be Mr. Leskowicz would give me the work papers to work on.

Q Where would you actually prepare that material?

A In our office.

Q In New York City?

A Yes.

MR. MAC DONALD: We offer the exhibit as identified.

(Pause.)

MR. TIGUE: Your Honor, would object on the ground that the proper foundation hasn't been laid.

MR. MAC DONALD: It might aid the Court to examine the back portion which Mr. Tigue has referred to.

THE COURT: Gentlemen, come up here.

(At the side bar.)

THE COURT: Mr. Tigue, do you take the position that page 1750 of Exhibit 80 is not in your client's writing?

MR. TIGUE: Well, I am reluctant to stipulate to it, your Honor, because the tax returns were taken subject to connection. The Government will claim at the end of their case that this connects it up, and I say it must be connected up through the person by whom the return was prepared. That is why I am making these foundation questions, your Honor, because there will come a time when the Government will rest and they have not connected their exhibits up. And I am not prepared to --

THE COURT: No, I will admit it in evidence.

xx (Government's Exhibit 80 for identification, received in evidence.)

(In open court.)

MR. MAC DONALD: May I read one page here, Honor?

THE COURT: You may.

(Mr. MacDonald read to the jury from Government's Exhibit 80.)

BY MR. MAC DONALD:

Q Mr. Nothofer, can you identify the handwriting which appears at the top of Government's Exhibit 91 for identification, a Xerox of which I show you.

A The handwriting?

Q The numbers. Is that your handwriting?

A No, sir.

Q It is not?

A No. Can I identify it, yes, sir, I can.

Q Whose handwriting is it?

A Mr. Leskowicz.

Q Can you identify Exhibit number 89 for identification --

MR. TIGUE: Your Honor, may I see what portion he is indicating.

THE COURT: Surely.

Q Can you identify Government's 91 for identification?

A Yes, sir, that's mine.

Q Is that your billing to the firm for the hours worked on this?

A Yes, sir. It is my hours worked.

MR. MAC DONALD: We offer Government's Exhibit 91 for identification.

MR. TIGUE: May I have one question on the voir dire.

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q Mr. Nothofer, I notice there's a date on the top. Is that the date --

A That's the week ended.

Q So the numbers on 91 are for the week preceding or perhaps including August 17, 1968, is that right -- '69?

A '69, yes.

MR. TIGUE: I have no objection, your Honor.

xx (Government's Exhibit 19 for identification, received in evidence.)

MR. MAC DONALD: We have no further direct examination.

THE COURT: Mr. Tigue, do you want a minute or two?

MR. TIGUE: I would appreciate it, your Honor. I am a little at loose ends.

THE COURT: Ladies and gentlemen, we will take a five-minute recess.

(The jury left the courtroom.)

THE COURT: Gentlemen, just so that my ruling on Exhibit 80 is clear on this record, among other reasons the witness had stated the figures on it were his. He stated he got the back up material from Mr. Leskowicz who, on this record the jury could find was Mr. Leonard's agent, and from a comparison of the initials on that yellow sheet of paper with the initials on Exhibit 66, it is perfectly clear that the jury could find that it was initialed by the same man, in other words, that the J.D.L. had been put on by the same man in both cases.

MR. MAC DONALD: Thank you, your Honor.

(Recess.)

(Jury present.)

xx CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. Nothofer, will you please tell us the procedure that you used after you put the numbers after the income tax return?

A It's reviewed by the partners.

Q By one of the partners in the firm?

A Yes, sir.

Q And in this case that would be Mr. Leskowicz. When I say in this case, I mean in 1968?

A Yes.

Q And he is the partner who reviewed this return after you finished with it?

A I believe so.

Q And I am showing you Government's Exhibit 2. Is this his signature in the lower lefthand corner which says Leskowicz, Brower & Driver?

A Yes.

Q Now, do you recall when you finished with it, sir, that is, the return, Exhibit 80, which is your penciled copy.

Will it help you to look at it? For instance, if you look at the bottom there is no date on the return.

A I couldn't tell you the date.

T3B

Q Please keep your voice up. I will move away in a minute.

A No. I wouldn't know what the date was. It finally was finished and set down.

Q And if you look at your time sheet, for instance, it says the week of August 17th, so it would have been prepared prior to August 17, 1969; is that right?

A I believe so.

Q And can you tell me when you came to Mr. Leskowicz's firm?

A 1969, the beginning of the year, about February.

Q And after the partner reviews the return and signs it, will you tell us what he does with it then, as a matter of procedure back at your firm, back in August of 1969?

A Well, after that it would be copied and sent out to the Internal Revenue Service.

Q Well --

A It would be copied -- copied for the number of copies required for the Internal Revenue, for the client, and then he would sign it and send it out to the various parties-- not to the Internal Revenue, sir. I'm sorry. It would go to the client, and the client would send it out.

Q And attached to Government Exhibit 80 is a yellow piece of paper, and I take it that is a copy of the

transmittal letter, is it not, sir?

A Yes.

Q And does the original have a set form of instructions as to what to do? That is, you sign it, and if you owe some money, you pay it?

A No signature is on it, I believe. I believe it is--there's more detail on there as to how you are supposed to pay it, if there are payments due, and to whom to send it, and to whom to make out the check to, which in this case--

Q If I can just stand here and read, at the top it is addressed to Mr. Leonard in New Jersey; is that right?

A Yes.

Q And that was done on August 14, 1969?

A Yes, sir.

Q And then it says, "1040, 1968, individual income tax", and there is a date, August 15, 1969; right?

A Yes, sir.

Q That would be the due date?

A Yes, sir.

Q Then, on this copy the form language is not printed, but the word "none -- see remarks" appears. Would that mean there is no tax due?

A Yes --

Q Are you finished? I don't mean to cut you off.

A No. I answered.

Q On the right-hand side the word "none" also appears. Does that indicate there is no tax due?

A Yes.

Q And on this return, for instance, in 1968, Mr. Leonard overpaid his taxes according to this form by some $15,000; is that right?

A Yes, sir.

Q So he did not have to write a check and mail it off with his return?

A That's right.

Q And on the lower right-hand side there is an address with the Internal Revenue Service in Philadelphia. Is thatthe location where New Jersey residents are required to file their income tax returns?

A I believe at that time it was; yes, sir.

Q I see. So this return, in the ordinary course, would have been prepared in New York, mailed to New Jersey and filed in Philadelphia; is that right?

A I couldn't tell you -- in the ordinary course, yes, sir.

Q Well, is there anything different about this one than the ordinary course?

A No, except I don't remember the circumstances of

whether it was delivered or mailed --

Q But the last you saw of it, you handed it to Mr. Leskowicz, and when was the next time you saw that piece of paper, Government Exhibit 80?

A I haven't seen it until this year, I believe.

Q When is the first time you looked at it again? That was 1968, and this is 1975. Did you mean 1974?

A No. At this time, 1975. At the time when this came up, that I was going to be called as a witness in the case, the return was taken out. It was my recollection-- I haven't seen it since then.

Q In other words, when you pulled it out, you gave it to Mr. MacDonald, or someone else did, and you discussed it; right?

A I didn't pull it out; no, sir.

Q I just wanted to get the Pennsylvania business straight, if I can. This is Government Exhibit 2, and it is stamped "Received" -- something -- "Philadelphia, Pennsylvania"; is that right?

A Yes, sir.

Q And at that time, that was the proper place for a New Jersey resident to file his income tax return; is that right?

A I believe so, sir.

T4a

Q Have you ever met Mr. Leonard?

A No, sir.

Q Do you know if he is the gentleman sitting at my right or not?

A Only by assumption.

Q The information that is attached to Government Exhibit 80 was given to you by Mr. Leskowicz, is that right?

A 80, again, is the tax return?

Q I'm sorry. Yes. 80 is your copy, or the original--

A It is my information from which we made up the tax return, yes.

Q Right. Now, there are a number of pages attached to that which I believe are what called supporting documents, is that correct?

A Yes.

Q And those documents were given to you not by Mr. Leonard but Mr. Leskowicz, right?

A Yes, sir.

Q And is Mr. Leskowicz alive today?

A He is.

Q Is he well?

A Yes, sir.

Q Is he in New York?

A Yes.

Q Do you know if a corporate return was prepared for the fiscal year ended 1969, that is, January 31, 1969?

A I don't know. I assume it was.

Q Did your firm prepare the 1969 income tax return?

A For the corporation?

Q No. I'm sorry. For the individual, for Mr. Leonard personally.

A Again, I can't answer -- I didn't have anything to do with it, to make up the 1969. But I believe the continuity is there until recent years. I don't know when we-- if we ever terminated making up tax returns personally for Mr. Leonard or not.

Q Let me show you Defendant's Exhibit X for identification. Tell us if you can identify that, sir.

A Yes, sir. That's a tax return prepared by our office. Evidently the name and address --

Q Could you keep your voice up a little? I know it is my fault. I am too close.

A Yes, it is signed by our firm. We did make up the company tax return.

MR. TIGUE: I offer it in evidence, your Honor, Defendant Exhibit X for identification.

VOIR DIRE EXAMINATION

BY MR. MacDONALD:

Q Is this your handwriting, Mr. Nothofer (handing)?

A You mean the body of the return, or any part of the return?

Q Any part of it.

A No, sir.

Q And it is a copy of an original somewhere?

A Yes, sir.

MR. MacDONALD: Your Honor, we object on the basis of an insufficient foundation.

THE COURT: Mr. Greenberg.

(At the side bar.)

THE COURT: What is the foundation that has been laid by this witness for this exhibit?

MR. MacDONALD: He just said that it appeared to be a return which "Our firm prepared," from the numbers and the signature, but that he personally did not prepare it and he doesn't know where the original is.

MR. TIGUE: I don't believe he said "appeared," your Honor. I think he affirmatively said this return was "prepared by our firm."

THE COURT: Read me that answer, please.

(Answer read)

MR. MacDONALD: Then in cross-examination I asked him if it was his and he said no, it wasn't, and I have

forgotten whether I asked him if he knew who else's it was.

Your Honor should recall that the Tax Service Center witness at the outset testified that no such return was ever filed with the IRS and that the first time that a corporate return was filed was in 1971.

I have the original; I have possession of it. I have not compared it to that. I assume that it is identical.

MR. TIGUE: Your Honor, when he says "the original," he means that he has the files of this firm wherein the original is contained. Now, I could get that out --

THE COURT: Mr. MacDonald, would you be prepared to have this in evidence solely for the purpose of showing that this is a copy of a document that was prepared by Leskowicz, period, without showing that it was given to anyone, that it was filed with anybody, that it was turned over to anybody?

MR. MacDONALD: My problem, Judge, is that it is in part a balance sheet and profit and loss statement for an entity, and I take it Mr. Tigue is offering it to prove the truth of, I guess, the facts stated therein, which would include the existence of assets and the receipts and disbursements.

MR. TIGUE: Yes, your Honor. That was prepared directly from the books of the company which are in evidence.

THE COURT: He doesn't know anything about that.

MR. TIGUE: He doesn't have to know that. All he needs to do is authenticate it.

THE COURT: No.

MR. TIGUE: He doesn't. Mr. MacDonald put in a copy --

THE COURT: Yes. But he doesn't know what this was prepared from. So how can he say it was prepared from the books and records?

MR. TIGUE: He has authenticated it. I can argue that it is from the books.

THE COURT: Then you are reconstructing the schedule. There hasn't been proof that this was prepared from the books.

MR. TIGUE: I don't understand that. The books are in evidence.

THE COURT: Right.

MR. TIGUE: He has authenticated the document which purports to be the return. He has sworn that it is the return prepared by his firm, and I think it is therefore admissible. If I want to make --

THE COURT: It is admissible as a copy of the instrument that was prepared by his firm, period, but it is not in evidence as to the books and records of the Leonard

Process Co., unless somebody is prepared to say that this last sheet was prepared from their books.

MR. TIGUE: I am very confused, your Honor. I am not even going to ask him about that. That is an argument that I am permitted to make, I believe, to the jury. It goes in precisely as your Honor said, that it is a document prepared by his firm, and he has authenticated it and I can tell the ladies and gentlemen of the jury, "Here are the books the government put in. Here is a tax return. There was a tax return prepared. There is no evidence in this case that it was filed. The lady said it wasn't filed. You decide for yourself whether or not it was filed on what the facts are."

THE COURT: No. You cannot argue on the record as it now stands that this page entitled "Leonard Process Co., Inc., 1/31/69," which has a Schedule A, is a statement of the financial matters about which it speaks, because there is no evidence that it is.

All that there is in evidence is that there is a sheet with some initials on it. There is no proof that this is a sheet of the Leonard Process Co., Inc.

MR. TIGUE: There is proof, your Honor.

THE COURT:No, there isn't any proof, not as to this piece of paper.

MR. TIGUE: I just don't understand, your Honor. It seems to me -- first of all, the foundation has been laid. He has identified it. It is relevant. So I think it is therefore admissible.

THE COURT: But he can't say what it was prepared from.

MR. TIGUE: He doesn't have to. Supposing he were dead, and supposing the person who prepared that were dead. I think we could bring in somebody else to prove it.

THE COURT: I know. I would think you could. But you have not.

MR. TIGUE: I don't have to. It doesn't make any difference.

THE COURT: You have to demonstrate there is a connection between this Schedule A and the books of the company.

MR. TIGUE: I can do that, take the books on voir dire.

THE COURT: But that isn't the condition of the record at the present time.

MR. TIGUE: But the books are already in evidence, your Honor. The very book that those numbers were taken from is in evidence and this is what it was prepared from. He

has authenticated it. I just don't understand why it is not admissible. There is evidence in the case. The government claims no tax return was filed, and I have a right to rebut that with this witness.

THE COURT: You have a right to prove through this witness that this instrument is a copy of an instrument that he says he prepared. There is no proof at this point that it was filed..

MR. TIGUE: Yes, that's correct.

THE COURT: No proof that it was filed and no proof as to where these figures came from.

You may be able to establish that.

MR. TIGUE: Okay. Fine.

THE COURT: But at this point there is no proof where these figures came from.

All right. On that basis, I will admit it.

(In open court)

THE COURT: Exhibit X will be received in evidence.

xx Ladies and gentlemen, I am going to receive Exhibit X in evidence, which is an instrument stamped "Copy" and bears on its face -- well, it is a copy of a United States Small Business Corporation income tax return form, and it bears on its face the name Leonard Process Co., Inc. and the year 1968.

I am admitting it only for the purpose of showing that this instrument is a copy of an instrument that was prepared by the Leskowicz firm. It is not in evidence for any other purpose and at this point it is not in evidence for the truth of any of the financial matters contained in it but merely for a showing that the Leskowicz firm prepared this piece of paper.

(Defendant's Exhibit X for identification was received in evidence.)

xx

MR. TIGUE: I would like, your Honor, just to read portions of page 1 of this exhibit.

THE COURT: Very good.

(Mr. Tigue read to the jury from Defendant's Exhibit X in evidence.)

MR. TIGUE: I have no further questions, your Honor.

THE COURT: Very good.

MR. MacDONALD: May we have this marked as Government's Exhibit 94 for identification.

(Government's Exhibit 94 was marked for identification.)

xx

REDIRECT EXAMINATION

BY MR. MacDONALD:

Q Mr. Nothofer, would you look at 94 for identification and tell us, please, if it appears to be a copy of

another 1120S for Leonard Process Co., Inc. for 1968 prepared by the firm (handing)?

A (No response)

Q Maybe it would help if you had the original Defendant's Exhibit X to compare it again.

A Well, the difference between the two --

THE COURT: Mr. Nothofer, just stick with Mr. MacDonald's question for a minute.

Q Is that another copy of a different 1120S for Leonard Process Co., Inc. for 1968?

A This is another copy.

Q Of a different 1120S?

A Of a different 1120S.

Q Also bearing figures and signed by the firm?

A This is not signed.

Q I'm sorry. It has the address.

A Yes.

Q Does it bear the word "Superseded" on the front page?

A Yes.

Q And would you compare, please, the gross receipts figures and the bottom line, the taxable income figures, between Defendant's Exhibit X and Government Exhibit 94 and tell us if they are the same or different?

A Different.

Q And in the superseded version was the reported taxable income a loss of $29,017.77?

A Yes, sir.'

Q And in Defendant's Exhibit X, which is headed "Amended version", did the loss increase to $73,742.33?

b3 A Yes, sir.

MR. MacDONALD: We would offer Government's Exhibit 94 for identification on the same basis.

THE COURT: Mr. Tigue, have you seen this?

MR. TIGUE: No, I have not. I mean I received a copy.

(Pause)

MR. TIGUE: Just one question.

RECROSS EXAMINATION

BY MR. TIGUE:

Q Do you know whose handwriting the word "Superseded" is in on the front page of 94?

A No, sir, I don't recognize the handwriting.

MR. TIGUE: I would have no objection to 94, your Honor.

THE COURT: It may be received.

(Government's Exhibit 94 for identification was

xx received in evidence.)

MR. MacDONALD: We would also offer, I believe without objection, Government Exhibit 79 for identification, being copies of the bank statements of Leonard Process Co.

MR. TIGUE: No objection.

THE COURT: Received.

(Government's Exhibit 79 for identification was received in evidence.)

xx

MR. MacDONALD: We have no further questions.

MR. TIGUE: I just have one question for the witness.

MR. MacDONALD: Mr. Tigue is asking for documents.

(Pause)

BY MR. TIGUE:

Q May I show you, Mr. Nothofer, Defendant's Exhibit Y? And when you look at it, would you compare it also with Exhibit X for a minute and I'll ask you a question?

A This is the client's copy.

MR. TIGUE: I offer in evidence Defendant's Exhibit Y. The offer is broader, but I assume the ruling is the same.

THE COURT: Let me see it.

MR. TIGUE: Yes, your Honor(handing).

(Pause)

THE COURT: I take it,Mr. MacDonald, you examined

all of the pages, including the first one, and that your position is the same?

MR. TIGUE: I don't necessarily offer the first one. It is the return, your Honor, which we are offering.

THE COURT: All right, it will be received on the same basis.

(Defendant's Exhibit Y for identification was received in evidence.)

THE COURT: There is no objection to it.

MR. TIGUE: I have no further questions, your Honor.

MR. MacDONALD: We have no further questions. Thank you.

THE COURT: Thank you, Mr. Nothofer.

(Witness excused)

MR. TIGUE: Nor do I intend to read it to the jury, your Honor.

Your Honor, may we approach the side bar while the next witness is coming in?

THE COURT: You may.

(At the side bar)

MR. TIGUE: Your Honor, Mr. Egan is the man from Chase Manhattan Bank who is going to drop into evidence, I guess, a third of a million dollars in checks ultimately from the Swiss bank. I think the government will attempt

to show that.

I believe we are now going to get to the point where some substantial argument will be required on the admissibility of that, and if I am also correct this will be the last witness until this afternoon's witness.

MR. MacDONALD: Right.

MR. TIGUE: I don't know how much cross-examination I would have, but before these checks are shown to the jury I would like an opportunity to more fully argue my position on the admissibility, your Honor.

THE COURT: All right.

MR. MacDONALD: I have no need to show them during his testimony. We can authenticate them and withhold their being displayed.

THE COURT: All right. You have other testimony--

MR. MacDONALD: This afternoon.

THE COURT: In addition to the checks, I gather there will be certain notations that have to be orally explained, do they not?

MR. MacDONALD: Yes, your Honor.

THE COURT: All right.

(In open court)

xx H A R R I S E G A N, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. Egan, would you tell the jury your occupation, please?

A Yes, I am employed by the Chase Manhattan Bank right here in New York City. I am an official of the bank.

Q And at what branch are you currently located?

A Presently located at 30 Rockefeller Plaza.

Q And during your attention to 1967 and 1968, at what branch were you located?

A I was assigned to what we call our United Nations Plaza Branch, which is at the corner of First Avenue and 46th Street.

Q At that time what was your position at that brnch?

A I was either the manager of the branch or the second in command. I'm not sure. The transition took place right at that time.

Q In either event, you would have been an officer?

A I was an official of the branch.

Q Were you authorized to sign official checks drawn

on Chase Manhattan Bank?

A Yes, I was.

Q In that capacity?

A Yes.

Q I show you Government's Exhibit 81 for identification and ask you to address yourself to the topmost check and tell the jury if you can identify any handwriting that appears on that instrument?

A Yes. My signature appears on the check on behalf of the bank as the official signing the check.

Q Would you turn the page to the carbon copy of that instrument and tell us if you can identify any handwriting on it?

A Yes. That is the original of my signature.

Q And would you address yourself to the next check?

A Yes. That is my signature.

Q And the carbon copy of it?

A It is my original signature on the copy.

Q All right.

And the third check, please?

A The same thing, my signature.

Q And the carbon?

A My signature.

Q And the fourth check?

A It is not my signature.

Q Whose signature is it?

A It is that of Mr. Truman E. Wilson.

He was an official of the bank at that time.

Q At the same branch?

A The same branch.

Q How about the carbon copy?

A Mr. Wilson's original initials on it.

Q And the next check, please?

A Mr. Wilson again, Truman E. Wilson.

Q And the carbon of that?

A Mr. Wilson's original initials on the copy.

Q And the final check?

A That's not mine either.

Q Whose signature is it?

A Mr. Samuel McCafferty.

MR. TIGUE: Is that the November check?

I cannot read my copy.

Q Can you just identify it by the date?

A November 27, 1968.

MR. TIGUE: Thank you.

Q And it is a carbon copy of it?

A I believe that there is an original S and I believe that is Mr. McCafferty's S on the copy.

Q With respect to each of the original checks, those are, of course, official instruments entitling the named payee or their order to the fund, is that correct?

A Yes.

Q And the carbon copies are what kind of record, and can you tell us the circumstances under which those are prepared?

A Yes. The carbon is termed auditor's copy. It is originally attached to the original check, and when the check is signed the carbon is removed and it is put into what we call an auditor's box for the purpose of auditing these checks later on in the day, and also for a permanent audit record.

Q And in addition to those two records there are associated with each such payment, did the branch at U. N. Plaza receive a third piece of paper from someother portion of Chase Manhattan that related to each of those six payments?

A Yes. Underlying the issuance of each check is a fanfold form, which again is the bank's control of the transaction and which is the record that usually provides the impetus for the issuance of such a check.

Q And have you at my request inquired as to the current existence of the fanfold forms underlying those instruments?

A Yes, I have.

Q And what was the result of your search?

A They have been destroyed in accordance with bank policy after, and I'm not certain of the years, I think it is five years.

But most bank records are destroyed on a regular schedule of that kind. There is no purpose in keeping them.

Q With respect to the lower left-hand corner of each of those carbon copies, is there some information that is added by the person preparing it in respect of the source of the funds which are being transferred by the instrument?

A In one instance there is an inked notation.

Q There are actually --

A The other notations appearing on the bottom indicate that the funds with the expression "other demand deposits" was written here, which would indicate that these funds were temporarily held in a suspense situation, pending the payment of the money to someone.

Q Is that on a suspense ledger at your branch?

A Yes.

Q Would you address yourself to the next carbon that has a different notation other than "demand deposit"?

A There is an inked notation "notify and pay."

Q And what does that expression mean in banker's parlance?

A This means that we have been notified by our main office that monies exist for an individual, or corporate entity perhaps, and that we are authorized to pay that money out to them, and the transaction is referred to as a Notify and pay transaction, and that is often written on there.

That is a common expression to indicate why the check was issued.

Q Would you look, please, at the next carbon indication?

A Again, "Head Office International, Notify and Pay," which is the same --

Q It actually says "H/O" --

A Yes, and "Int'l."

Q Tell the jury what "Head Office International" is?

A The International Department, of course, handles transactions dealing with overseas matters for individuals, corporations or any type of overseas transactions, and in these instances monies are coming in from overseas and the ourting of these monies is from the overseas point, a bank overseas, into our main office.

If the individual or the company doesn't bank at any specific office of the bank, has no accounts with the bank, then these monies are telephoned to various branches around the city close by the individual or the company getting those monies.

And in this instance, these monies went into our main office and they were telephoned to our particular office, First Avenue and 46th Street, and we were instructed thereby to pay these monies out.

Q And the fanfold form is a confirmation of such a phone call?

A Yes, it is.

Q It follows in the mail within a day or so.

A Yes. It follows the phone call the following day. We are notified by phone, and through tests, we have of numbers we can be certain that the monies -- that this is an authentic request to pay monies out. And then the actual written confirmation comes to us probably the next day or the day following.

Q What does that written confirmation say in respect of the source of the funds that you were directed and authorized to pay out?

A Well, it indicates the bank from which the monies came and it may or may not indicate the remitter

of it - the order party, as we call it, the person or company sending the money.

Q And do you have a memory of that information in respect of these six payments, what was on the fanfold form with respect to the six payments that you have before you?

A Yes, sir, I have a memory of them.

Q Can you tell the jury your best recollection, please, of what that notation was?

A Yes. These monies were all payable to Mr. Jackson D. Leonard and these monies came in through a Swiss bank and they came in through the same Swiss bank, through the same channels each time.

Past that, I have no recollection of the bank in question. I couldn't be certain.

Q What about the remitter? What is your best recollection with respect to what the fanfold form said in that respect?

A My best recollection on that is that these came through a numbered account.

Q Would you look, please, at the last carbon copy, the signature item?

A Right.

Q Does that contain some nomenclature different

than "other demand deposits" and "H/O Int'l"?

A Yes, it does.

It is an inked notation by Mr. McCafferty, presumably Mr. McCafferty or a bank employee, "Notify and Pay, received from Banque," and it says "Continentale, Zurich, via Head Office International."

Q Do you happen to know that there is a bank known as Banque Cantonale, in Zurich?

A Yes, there is.

Q Does that refresh your recollection with regard to the original notations to the fanfold forms you described?

A My best recollection would be Banque Cantonale in Zurich, on that.

MR. MAC DONALD: We would offer that as an exhibit.

Q Mr. Egan, do you have a memory of what you did with those original checks after you signed them?

A Yes. I delivered these -- whether I delivered all or a portion thereof -- but I delivered several of them directly to Mr. Leonard's residence, which was across the street, and this is a common practice in banks.

As a marketing tool, it's an effort on our part to develop business.

Mr. Leonard didn't bank with us, and by virtue of delivering these it would be my hope that I could perhaps get him to turn this money back into the bank as an additional deposit, and so these were delivered on that basis to Mr. Leonard.

Q Did you actually go to his apartment and hand them to him at the apartment door?

A Yes; I did. I knocked on his door, and he received me at the door, and I turned the money over to him -- or the checks over to him.

MR. MAC DONALD: We have nothing further on direct.

MR. TIGUE: Your Honor, I would object to the exhibits in that they have nothing whatever to do with the charges that are contained in the indictment and for reasons which I believe as your Honor said, I would have an opportunity to more fully state.

THE COURT: Very good.

Gentlemen, come up for a minute.

(At the side bar.)

THE COURT: Mr. Tigue, do you want to state these reasons before they are read or before I rule on it?

MR. TIGUE: Well, I don't want to interrupt the trial.

THE COURT: Have you any further witnesses this morning?

MR. MAC DONALD: No.

THE COURT: You have one witness during the mid-afternoon?

MR. MAC DONALD: Yes, and the Government will rest.

THE COURT: Is it all right with you if I excuse the jury at this time?

MR. MAC DONALD: I don't know if Mr. Tigue is in a position to complete his cross examination until Mr. Egan is excused.

(In open court.)

THE COURT: All right.

I will excuse the jury for the moment.

Mr. Egan, you may step down at this point.

(The jury left the courtroom.)

(In the robing room.)

MR. TIGUE: Your Honor, the first objection is on the obvious grounds, I believe, of relevance. There are no such charges in the indictment and I believe the Government will concede that. The offer, I believe, is only as to the matter of wilfulness, I believe. Is that the extent of the offer?

THE COURT: I so understand.

MR. MAC DONALD: I expect the charge at the end of the case would so limit all the wilfulness proof that will come in on the Government's case.

MR. TIGUE: Well, if your Honor finds it persuasive in the next few minutes, I ask that the instruction be given now. I believe with respect to similar acts

there's a Second Circuit case which requires the trial court at the time it's taken to instruct the jury.

I guess the obvious argument which appears is that these checks total $383,000. I stated my objections in my request for a continuance at the beginning of the trial because I learned this literally on the even of trial. It seems to me that this is a rather clear case of something which is going to confuse the jury as to the nature of the charges in this case.

The Government no doubt will contend that this is proof that the affidavit which Mr. Leonard submitted was false, in that he did have a Swiss bank account.

THE COURT: What's the date of that affidavit?

MR. MAC DONALD: August 27, 1969. It speaks backward in time, I think.

MR. TIGUE: I believe for them to show a similar act, that is, a false affidavit, the Government would have to in fact show beyond a reasonable doubt that it's false.

The Government, I think, will claim that this is circumstantial evidence, surely not direct evidence, that the affidavit was false and they will contend, I gather, that he indeed has an account at the Cantonale Banque de Zurich.

I don't believe they have established that, your Honor. I believe what they have done is attempted through

the use of the testimony of Mr. Egan and this one piece of paper, which indicates where one of the checks came from, that the money, even viewing the evidence most favorable to the Government, came from a Swiss bank account, and there is no indication as to who the owner of that account is.

The affidavit says two things:

One, that he didn't have a Swiss bank account;

Two, that he didn't have transactions with a foreign bank except this Australian bank. This doesn't disprove either one of these issues, your Honor. He dealt here with the Chase Manhattan Bank, which is not a foreign bank, and I believe it failed on that statement of the affidavit, and the Government has also failed in that they can't show that these monies came from a bank account, which is in fact his bank account.

I think the Government must prove beyond a reasonable doubt that it's his account.

Now, the fact that it's a numbered account and that they are unable to prove it as they are required, I think, by the standards of this Court I think is unfortunate for the Government, but it's the law, nevertheless.

I think it's kind of an inference upon an inference.

What the Government is going to ask the jury to

do is from the testimony and the exhibits, to draw the inference that he had a Swiss bank account and then they are going to take that inference and go to the affidavit and say that the affidavit is false and from the inference you should find that when he signed his income tax return he was also signing a false return.

I don't believe that they have carried that burden.

Overall, your Honor, the overwhelming prejudice on the one side -- I think this is really overwhelmingly prejudicial -- compared to the probative value which the Government would establish here -- the probative value is rather small when you view what they are attempting to do. They are attempting to show one element of wilfulness.

It seems to me that the Government has an enormous amount of documentary and testimonial evidence in the case and this is simply -- I have forgotten the term Judge Palmieri used, a mixed metaphore, gilding the lily or something -- but they are attempting to over-kill to the point where it becomes prejudicial to Mr. Leonard.

He is not on trial for having a Swiss bank account, and if it were so it would be Count 3 in this indictment, and then I would be in a position to defend it, and I think on the Government's record it would be

dismissed. If they can't prove it before a grand jury, why should they be able to prove it in the trial? I think it's unnecessary under all the evidence in the case.

MR. MAC DONALD: I address myself first of all to the first theory of admissibility, as to it's probative value on wilfulness. That is, aside and apart from the affidavit, it's admissible under the cases which we cite to your Honor, Harris and Juringen, as contemporaneous substantially similar acts, not charged in the indictment, admittedly, not set forth in the bill of particulars, admittedly, by definition as a similar act -- which the jury may properly consider on the issue of wilfulness and as such those cases each support, I believe, the admissibility.

In Harris -- I read it most recently -- there was a 50,000 unreported item in a 7601 case, and the Government found a $35,000 or $40,000 item on the even of trial that was not charged in the bill and not set forth in the indictment and it was admitted with an instruction that it's going to wilfulness only, that the jury couldn't convict on that count if it didn't believe the other proof with respect to the $50,000 in funds.

As an alternate basis of admissibility, Mr. Leonard's affidavit is broader than "I had no signatory control over a Swiss bank account."

He said he didn't have any transactions or dealings of any nature with any foreign bank. He didn't say directly. He didn't say indirectly. He then gave two examples of foreign bank transactions, currency exchanges and a loan from an Australian bank. He didn't say it was a loan to him directly or via Banque Cantonale or otherwise, so I suppose Mr. Tigue could argue that the affidavit is false.

But we say that those arguments go to weight, not the admissibility, and the jury can properly read the affidavit in all of its four corners against the checks and conclude that in fairness, Mr. Leonard should have disclosed that $383,000 in the dealings with the Banque Cantonale through the Chase Manhattan Bank.

The business records show that it was a numbered account in that bank rather than an overt account, which is another fact from which the jury may conclude that the funds aren't -- back to my first argument -- a tax-free receipt. I guess Mr. Leonard is on the prongs of a dilemma. Either they were from a numbered account of a corporation, in which event they would be gross receipts to him, or a numbered account of his own, in which event the affidavit is obviously false right to the very core of it.

I suppose the third hypothetical was the numbered account of a person who made a gift or bequest to him. I suppose he could argue that, if there's testimony to support it. But we suggest that the authorities fully support the admissibility on either of those theories.

THE COURT: Gentlemen, each of you can supply me with one thing.

Do you have a copy of the affidavit?

And let me look at your memorandum of law. I seem to have left that in my chambers this morning.

MR. TIGUE: If I may just say one last thing, your Honor, I think the other alternative, which Mr. MacDonald hasn't excluded, is in fact the money wasn't the proceeds of a loan. I think it would be permissible to ask them to draw the inference that this was unreported income, because there is no evidence to support that.

Lastly, similar acts -- all similar acts are addressed to your discretion as the Court, and while I certainly don't represent that Mr. Leonard will or will not testify, I would think that one of the items which would go into the exercise of discretion is the possibility that the Government would get to use it for cross examination.

That would not be done if Mr. Leonard doesn't take the stand, but I would wish to argue from the point of

preserving Mr. Leonard's rights.

THE COURT: Mr. MacDonald, the thrust of the charges here, as I see them, are that certain checks that came to him, that were made out to Leonard Process Company by Treadwell were cashed by him at the First National Bank, and the cash went, we know not where. That's what it amounts to, and the Government's position is that these Treadwell monies were a form of income to him that should have been reported, and in order to show that he had a state of mind to conceal financial transactions of one kind and another, Treadwell, etcetera, $383,000 of Swiss monies -- no, let me stop there.

His statement to the agent that he had not had any transactions or dealings with any foreign banks -- and it is perfectly clear that the year 1968 was in his mind because it's in the affidavit -- that that statement was designed to, or the jury could find that it was designed to, throw the IRS off the track.

MR. MAC DONALD: Your Honor has reminded me of the third point in my brief, which I overlooked.

THE COURT: What you are trying to do is to show that a man who gets $383,000 that in fact comes from a Swiss source in fact had a dealing with a foreign bank or a transaction with a foreign bank?

MR. MAC DONALD: That's right.

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T5B THE COURT: Leaving open only the question of whether he knowingly or unknowingly had that transaction, and given the fact that it was $383,000 puts it in a much different perspective than if it was a check for $50. If it was a check of $50, I would probably exclude it. Therefore, the jury is entitled to conclude from that that he did knowingly and wilfully conceal the Treadwell checks, just as he was knowingly and wilfully concealing the foreign transactions.

MR. MacDONALD: Yes.

THE COURT: Or the concealing of the foreign transactions was the same as the concealing of the Treadwell transactions -- to conceal financial transactions from the Internal Revenue Service.

MR. MacDONALD: One of those cases in that memorandum, Judge -- the third ground, which is the inconsistent exculpatory statement ground as being independent evidence of wilfulness: I tried this case, and that is why I cite it all the time.

This young fellow was trying to pass a bill, and he said when he was first asked that he got it from X, and the next person who asked him, he said, "I got it from Y."

The government rested, then, and the judge said that the jury could infer as long as they were mutually

exclusive, one or the other had to be false, and it was proper to judge the jury that false exculpatory statements are independent evidence of the state of mind of the defendant.

MR. TIGUE: I would think if the checks were $10,000,000, you would exclude it also, on the grounds it's either too big or, as the case of the $50, too small. If it's too big, the prejudicial value tips the scales. I think this amount of money --

THE COURT: My feeling is that this in some degree a discretionary matter, and if a fellow got a check from the Chase Bank for $50, if in fact it came from Europe, I don't think that would entitle the same inference to be drawn that $383,000 entitles you to draw, and therefore, as a discretionary matter, if it were $50, I would rule it out.

MR. TIGUE: But there comes a point when it is so large that the prejudice tips the scale compared to the probative value. That's what I wanted to bring out.

THE COURT: On the other hand, I see it as becoming so large that you virtually feel that he either knew or must have known the source.

In any event, there is in fact a direct conflict, because whether or not he knew, his statement is, "I did not have any dealings", and the fact is he had a dealing.

MR. TIGUE: With an American bank.

THE COURT: No. He had a dealing in fact with a Swiss bank. He got $383,000 from the Swiss bank.

MR. TIGUE: No, your Honor. It was from an American bank.

THE COURT: It came from a Swiss bank to an American bank. The size of the transaction, I think, to the contrary, is of a kind that carries almost its own knowledge of its source.

But in any event, there is a square conflict, as I see it, and to the extent inferences can be drawn, I am going to admit these checks.

Now, what kind of a limiting instruction would you like me to give, Mr. Tigue?

MR. TIGUE: Well, your Honor --

THE COURT: Without waiving any rights that you have.

MR. TIGUE: Yes. I would like your Honor to instruct them that this is no proof of the charges contained in the indictment.

THE COURT: And it is only to be considered by the jury on the single issue of the defendant's wilfulness and no other issue.

MR. TIGUE: Yes. That, too, your Honor.

mph4 Egan

I would also ask your Honor to remind the jury that there is no charge in this indictment that Mr. Leonard had a Swiss bank account.

MR. MacDONALD: I wonder if we can have an affirmative explanation to the jury of what the checks are proof of. You seem to have three negatives in your request.

THE COURT: No. The second is a positive. These are only to be considered on the issue of Mr. Leonard's wilfulness.

MR. MacDONALD: That is right.

THE COURT: And on no other issue.

MR. MacDONALD: Yes. You say he is not charged with having a Swiss bank account.

MR. TIGUE: That is right. There is no charge in the indictment that Mr. Leonard had a Swiss bank account.

MR. MacDONALD: That is a little bit misleading. It has never been a crime and was not in 1968 to have a Swiss bank account.

MR. TIGUE: I would press that also, your Honor.

THE COURT: No. I am going to decline to say that there is no charge that he has a Swiss bank account. You can argue that. I am going to say that this is --

MR. TIGUE: I would ask your Honor to instruct them as to the law that it is not illegal to either have

a transaction with a foreign bank or to have a foreign bank account.

THE COURT: I am going to state to the jury as follows: That this evidence is not proof of any charge contained in the indictment. It is only to be considered by you on the issue of defendant's wilfulness, should you reach that issue, and for no other purpose. I feel it is fair to add that the mere transaction with a Swiss or other foreign bank or the mere having of a Swiss or other foreign bank account is not illegal.

You may argue, Mr. MacDonald, that it is not the use of it that you say constitutes the evidence of wilfulness. I would be required, I think, to give that instruction in any event.

Mr. Tigue, does that meet your thoughts in this?

MR. TIGUE: It meets my thoughts but not my complete approval, your Honor.

I would ask two things, your Honor: if I could put my motion for a mistrial on the record now rather than outside.

THE COURT: You mean by the admission of this proof?

MR. TIGUE: Yes.

THE COURT: You may.

MR. TIGUE: I move for a mistrial based on the

admission of Government Exhibit 81 in evidence.

THE COURT: Motion denied.

MR. TIGUE: I would ask, then, for a continuance, at the end of the government's case, to attempt to find some way to rebut the evidence which is being introduced today through Mr. Egan and through the additional witness, whose name I do not have.

THE COURT: Let us take that up at the end of the afternoon.

(In open court; jury present.)

MR. MacDONALD: Your Honor, we offer Government Exhibit 81 for identification in evidence.

THE COURT: Yes. Over objection, that will be received.

(Government Exhibit 81 received in evidence.)

THE COURT: Now, ladies and gentlemen of the jury, I want to make a statement to you which is to guide you in the consideration to be given to these exhibits that I have just admitted into evidence.

These exhibits are not proof of any charge contained in this indictment. I repeat that. These exhibits are not proof of any charge contained in this indictment. They are being received in evidence only on the issue of Mr. Leonard's wilfulness as charged in that indictment,

should you reach that issue in your determinations later as a jury, and they are not received for any other purpose. They are received only on the issue of wilfulness and for no other purpose.

Now, I feel it also fair to say at this time-and I would charge again -- that the mere transaction of a person with a Swiss or other foreign bank or merely for an individual to have a foreign or Swiss bank account in and of itself is not illegal.

All right, go ahead, sir.

CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. Egan, my name is John Tigue, and I am the attorney for Mr. Leonard.

Could you tell us, sir, if you have heard of a bank called Australia & New Zealand Bank, Limited?

A Yes, sir; I have.

Q And is that a bank that does business throughout the world?

A To my knowledge, yes.

Q And do you know if it has correspondent banks located in Switzerland?

A I don't.

Q And would somebody in the international department

of your bank know that?

A Yes; they would.

Q Have you heard of a bank by the name of the Bank of New South Wales, of Sydney, Australia?

A Yes; I have.

Q And does that bank do business throughout the world, sir?

A To my knowledge, yes.

Q And do you know if they have correspondent banks in Switzerland?

A I don't know it.

Q Will you tell us, please, what a correspondent bank is?

A It's a bank having a relationship or having money with another bank on deposit to facilitate transactions between the two institutions.

Q Is that sometimes called a reciprocal account?

A I have never heard it called that,but it could be. I think so.

Q Does it have a name other --

A Just a correspondent relationship, is the bank expression for it.

Q And is it home office or head office, sir?

A Both are interchangeable.

Q The head office would have the details which would support the documents which have been referred to in your direct testimony?

A Yes, sir. Head office and branches.

Q And if someone had come to you earlier and asked for all of these documents, they would have been preserved presumably for a period of years?

A When you say "earlier" --

Q Well, earlier when these documents were produced.

MR. TIGUE: Let me withdraw that. I am sorry.

A If they existed, they would be preserved.

Q But by the time the government came to you and asked for these particular checks, the underlying documents, except for those in Government Exhibit 81 -- all other related documents have been destroyed; is that right?

A Right, sir.

Q And I believe you said earlier that your recollection was that the remitter of these checks was a numbered Swiss bank account?

A Yes, sir. That's my best recollection.

Q Actually, all bank accounts have some number attached to them; is that right?

A That's right, sir.

Q Now, do you know the names of any of the correspondent

banks of the Cantonale Bank of Zurich, I believe you said?

A It's Banque Cantonale du Zurich.

Q Is that a German pronunciation, Zurich?

A I don't know. It's the way it's pronounced around the bank, and I picked it up in that fashion.

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Q And it is perfectly clear in this case that the checks that have been marked as Government Exhibit 81, the checks which you were shown before, were in fact given to Mr. Leonard, were they not?

A Yes; they were.

MR. TIGUE: No further questions. Thank you, Mr. Egan.

THE COURT: Mr. MacDonald?

MR. MacDONALD: We don't have any further questions. Thank you very much.

(Witness excused.)

MR. MacDONALD: Before we break, may we pass the exhibits to the jury?

THE COURT: You may.

(At the side bar.)

THE COURT: Mr. Tigue has indicated he may ask for a continuance based on this morning's testimony, and he anticipates being heard this afternoon. I have told him I would not grant it as of this time, but I am stating that

at the very beginning of this week, in the middle of the case, I did not feel the case as such was at a stage that I could consider the motion, but now I am prepared to consider what he believes to be the need for a continuance.

MR. MacDONALD: I was going to suggest that I am aware that in many countries of this world process is available to litigants to obtain evidence. However, on the government's motion, no deposition may be taken without the consent of the defendant, and it depends on what is said in respect of those funds. The government may be asking the court to tell the jury that, for example, in Australia Mr. Leonard the power to obtain evidence through process, and the failure to have done so is a fact that might be taken into account, and that witnesses are not equally available to both sides under those circumstances.

If Mr. Tigue has a specific person or bank in mind, he might be well advised to see if they would come here or give deposition testimony in their own country, through application to the courts in their own country, namely, Switzerland.

(In open court.)

THE COURT: Ladies and gentlemen, I am going to declare a long luncheon recess today, for matters that are not of your concern. We will reconvene at 3 o'clock, so

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you are excused until 3 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

3:00 p.m.

E V A E I L E E N B R O O K E, called as a witness by the Government, being first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mrs. Brooke, would you tell the jury where you currently reside or intend to reside?

A I shall reside in England in the future.

Q And are you the widow of Mr. Jack Brooke?

A I am.

Q And would you tell us when Mr. Brooke died and at that time where you were a resident?

A He died on April 12th, 1974 and we were residents of Oklahoma City.

Q And who was Mr. Brooke's employer in Oklahoma City?

A Kerr McGee Corporation.

Q How long had you maintained your residence in that location?

A Approximately four years.

Q I would like to draw your attention to the summer of 1971 and ask if during that period you and your

husband had occasion to spend an evening with Mr. Leonard, seated here, and his wife here in New York City?

A Yes, we did.

Q Would you tell the jury, please, what the four of you did that evening and, with respect to the business aspects of the conversation, what it was that Mr. Leonard and you and your husband talked about?

MR. TIGUE: Excuse me, Mrs. Brooke,

Your Honor, this is the summer of '71. I would object to this on the grounds of relevance.

THE COURT: Overruled.

Q Okay. You can describe that evening as it unfolded.

A Yes.

We were invited to Mr. Leonard's apartment to have drinks with his wife and himself, which we did.

Mr. Leonard was extremely anxious that my husband join him in business, and he that evening said that -- well, made inducements that it would be good that my husband went into business with him.

For instance --

Q Tell us what he said in that respect.

A A free apartment at Sutton Place, and he mentioned the sum of $100,000 a year, with my husband as president

of the company, 50,000 of which would be made in U. S. dollars and 50,000 to be deposited into a Swiss bank account.

Q Do you recall what, if anything, was said with respect to the name on such Swiss bank account?

A None, no name at all.

Q What response did your husband give to Mr. Leonard's proposal?

A He said he would consider it.

Q Was there any writing prepared that evening in regard to that proposition?

A There was in fact a written note on this, but I did not see it myself.

Q And would you tell the jury what, if anything, you recall, in regard to the 50,000 Swiss bank portion of the proposal, was said concerning the opening of such an account and --

A Well, my husband and I -- I recall we were talking socially then, it was not business. We were interested in how a Swiss bank account was got, and so Mr. Leonard, as I remember, was evasive about how to get one, but he did in fact say, "I have one."

Q Do you recall if he said --

MR. TIGUE: "I have" --

THE COURT: "I have one."

MR. TIGUE: "I have one?"

THE WITNESS: I have a Swiss bank account.

MR. TIGUE: Thank you.

Q Do you recall anything further with respect to whether that account was in a name or a number?

A He said that -- in fact I think I asked the question, I'm always curious, and he said that Swiss bank accounts are numbered and not in a name.

Q Did I ask you what happened to that piece of paper that you referred to that had the terms of the offer written on it?

A Yes. My husband and I were staying at the Plaza, and he threw it in the waste basket.

MR. MAC DONALD: We have nothing further on direct examination.

(At the side bar.)

THE COURT: Mr. Tigue, I think I will take a recess for about five minutes.

MR. TIGUE: Before we go, I would have a couple of motions and a request for a recess myself.

(In open court.)

THE COURT: Ladies and gentlemen, we will stand in recess for five or ten minutes.

Mrs. Brooke, you can step down and sit in the back of the room or wherever is comfortable for you.

(In the robing room.)

THE COURT: Gentlemen, I have been presented with certain 3500 material, one of which is Mrs. MacDonald's notes, 3512A-1, and that is not 3500 material to turn over to you.

On the other hand, the 3512 you have been given is affidavit of a witness filed in a case before Judge Wyatt. I direct that the Government make available to Mr. Tigue the entire affidavit.

MR. TIGUE: He has given me a copy already.

MR. MAC DONALD: I have just complied.

THE COURT: Now, that disposes of the 3500 aspect of this, so now 3512-A-2 will just be called 3512-3, because the A signifies those as to which you have questions, or

should I leave it with its number?

MR. MAC DONALD: I think the recordd will reflect that Mr. Tigue has 3512-A-2. I guess I should have in the presence of the jury said we renew our offer of the '71 and '72 statements tax returns.

THE COURT: The tax returns containing those statements? Let's assume that's been done.

MR. TIGUE: First of all, your Honor, I would move to strike all of Mrs. Brooke's testimony, because it doesn't prove the affidavit which was given in 1969 was false. She specifically said he didn't say whether he opened it or whether he had it. I think that's the substance of it. So I don't believe that she connected the two up at all, so it has no probative value with respect to what the state of Mr. Leonard's banking connection is, if any, back in 1969 and prior. So, I would therefore move to strike her entire testimony as being irrelevant.

THE COURT: Well, I will deny that motion.

MR. TIGUE: Then, your Honor, I would respectfully move for a mistrial in view of this testimony. I guess I have stated at length my position with respect to all this and I would renew it on all those grounds again.

THE COURT: The motion is denied. This in admissible as a statement in 1971 which this jury can take

together with other evidence in the case and find that there was a Swiss bank account in existence at the timeof the 1968 affidavit.

Taken together with the 1968 Chase Manhattan checks which were monies that had come from Banque Cantonale de Zurich.

All right.

MR. TIGUE: Your Honor, I have, in anticipation of this witness, served a subpoena on Mr. Paul Brown who has been calling the Court in the last few minutes, I believe.

Mr. Brown is the author of Government's Exhibit 3512-A-2, which I was originally given. When I say the author, I mean he's the draftsman and I believe he's the draftsman for this statement, and I believe he also drafted the affidavit for this.

I have subpoenaed whatever notes of any conversations he or anyone in his law firm have had with Mrs. Brooke. So I would like, if I could, a recess for two reasons. One, to have a few minutes to speak with Mrs. Brooke if she will speak with me, and, two, to have an opportunity at least before Mrs. Brooke is dismissed as a witness, to read whatever notes Mr. Brown may have in his possession.

THE COURT: That application will be granted. Where is Mr. Brown?

MR. MAC DONALD: In midtown somewhere. By the way, I don't think he is the author of this affidavit. I believe it was written by an Oklahoma attorney by the name of Walsh. So unless Mr. Tigue has a firmer basis than his client's speculation regarding authorship, we would not want to unduly delay the cross examination. The lawyer subpoenaed his attorney of record in the case before Judge Wyatt and he has provided me with the Xerox, 3512-A.

But I was told by Robert Walsh that he was the author of the affidavit.

MR. TIGUE: Your Honor, I would expect that the attorney of record would have a copy of whatever notes were taken, even though they aren't his own notes.

Secondly, Mr. Brown was the attorney who continued a deposition of Mr. Brooke on the even of his death, and Mrs. Brooke was present at the deposition, and I would think that at least before she is dismissed that I would have an opportunity to take a look at his notes --

THE COURT: Mr. Brown?

MR. TIGUE: Mr. Brown.

THE COURT: All right. I will grant that. That would mean as a practical matter you would go over to the

morning with her cross examination?

MR. TIGUE: I think I would have to, your Honor, and I would like an opportunity to chart with her right now.

THE COURT: Mr. MacDonald, I take it this lady, wherever she has come from, is prepared to stay overnight?

MR. MAC DONALD: Surely. I wonder if I could inquire of the Court whether or not your Honor -- I think Judge Griesa did this once with a witness -- apprise Mrs. Brooke of her rights with respect to submitting to an interview, off the record or on the record, with Mr. Tigue prior to --

THE COURT: It had occurred to me that I probably should do that.

MR. MAC DONALD: And the right to have counsel present of her choosing.

MR. TIGUE: I have no objection to advising her of her rights, your Honor, but my guess is that she has had more than one conversation with Mr. MacDonald, either in person or over the phone, and I simply would like to have the same conditions. I would not exclude a lawyer, but I would like to have an equal opportunity to that which Mr. MacDonald had.

It's a serious matter and it's your Honor's discretion. With that caveat, I suppose I don't --

MR. MAC DONALD: Your Honor, I suspect it turns out that having a record of defense counsel's interview with a witness limits opportunities for any misunderstandings.

Maybe Mrs. Brooke ought to understand what we have done in the past and what we are set up to do as to make --

MR. TIGUE: Did you do that of your interview with Mrs. Brooke?

THE COURT: I don't think I am going to do that.

Now, I have in mind to say to Mrs. Brooke, after telling her that she is to return in the morning at 9:30, and in the next few minutes I assume that Mr. Tigue, who is counsel for Mr. Leonard, would like to speak with her about the matters as to which she has given testimony; that there is no doubt on her part to talk to you; on the other hand, there is no legal bar to her talking to you, if it's her desire to do so.

MR. TIGUE: It's expressed a little negatively. Not illegal. I would prefer more layman's language, that its perfectly all right for her to speak with Mr. Tigue if she wants to, just as it was perfectly all right to speak with Mr. MacDonald.

THE COURT: All right. I will change it to this.

"Mr. Tigue wishes to speak to you about the

matters which are involved here, and you may speak with him if you desire to do so, but there is no duty or requirement that you do speak to him."

MR. MAC DONALD: I wonder about further advice concerning her right to attach, if she wants to, the condition of the presence of an attorney of her choosing. Maybe Mr. Tigue doesn't limit his request to interview her alone.

MR. TIGUE: Well, certainly, I am going to have a witness present. I am not going to depend on a you-tell-me type of question.

MR. MAC DONALD: If you want to interview her in my presence --

MR. TIGUE: Mr. MacDonald, I am not prepared to come to any agreement with you about anything in this matter. I didn't know about this witness until an hour ago, and I can't agree to anything like that.

THE COURT: All right, gentlemen.

MR. TIGUE: Is your Honor going to rule on the 1971, '72 tax returns?

THE COURT: Yes, I will admit them.

MR. TIGUE: I would object to both, but what does '72 have to do with this case? This conversation took place in 1971.

THE COURT: Let me see the tax returns.

MR. TIGUE: They were just marked for identification.

THE COURT: Where is the statement that --

MR. MAC DONALD: On the bottom of each page.

THE COURT: I will keep out '72.

MR. TIGUE: On '71, I assume the question is limited to the question, "Do you have an account".

MR. MAC DONALD: It's the statement on the return that is important.

MR. TIGUE: There's no relevance to anything but the answer to the question, if there is any relevance to that.

MR. MAC DONALD: We have had a suggestion about the taxpayer's tax paying habits as going to his motive, and at least at this point I won't do more than read it to the jury.

THE COURT: I will admit it with the instructions that it is admitted only with reference to paragraph 31 on the first page.

MR. TIGUE: I really object to that. My word, that has absolutely nothing to do with this case, except as your Honor has ruled, he said no on his return --

THE COURT: Well, that's all in evidence. The

balance of the return, obviously it's in evidence as a 1971 tax return of Jackson D. Leonard.

MR. TIGUE: But if the jury wants it -- I don't even know what's on the '71 return. I would ask that that not be shown to them, that the box be read but the numbers blanked out.

THE COURT: Mr. MacDonald, why don't you put in page 1.

MR. MAC DONALD: Why don't I simply read the question and answer to the jury, Judge, and maybe we can arrive at some accommodation about blanking out or not, and maybe the corss examination will make it admissible.

THE COURT: Well, I was going to say as far as I am concerned, page 1 is in, but it's blanked out from lines number 12 through everything pertaining to line number 30.

In other words, you have got the top and bottom, and the rest of page 1, the balance of it is out.

MR. MAC DONALD: I would just ask the Court to explain to Mrs. Brooke in Mr. Tigue's absence --

MR. TIGUE: I might be present.

THE COURT: Why don't I have her come in here? I think it should be on the record.

MR. MAC DONALD: Surely. She can answer whatever

she is going to answer.

THE COURT: Well, it will be a matter of record, Mr. Tigue, unless you want to be here, and I will introduce you.

(The witness entered the robing room.)

THE COURT: Mr. MacDonald you have met. This is Mr. Tigue, who is counsel for Mr. Leonard in this case.

He would like to talk to you on an interview-type basis, and in that connection I just want to, since you are -- I gather you are a British subject, are you?

THE WITNESS: Yes, I am.

THE COURT: Just so that I give you some thoughts that are appropriate for this request, I want to say that you may speak to him if it is your desire to do so.

THE WITNESS: I see.

THE COURT: You may, if you wish have someone else with you of your own choosing, a friend, a lawyer or otherwise, at any such time, if you wanted to have somebody else there at that time, or you may talk to him alone if you would like.

There is no duty incumbent on you, however, or any requirement that you do talk to him, and if you don't want to talk to him, then you needn't.

Do you follow what I say?

THE WITNESS: Yes, I do understand what you are saying.

THE COURT: So why don't you hop out now and think about what you would like to do and Mr. Tigue will presumably speak to you and you can guide yourself accordingly. He would like obviously, to discuss with you the matters that are involved in the testimony that you have given here.

THE WITNESS: Yes, obviously.

THE COURT: And the things related to it.

THE WITNESS: Yes, and I would say no, I don't mind discussing it with Mr. Tigue.

MR. TIGUE: Thank you very much.

THE COURT: All right. Why don't the two of you at your convenience, chat as to the circumstances under which you will do it and when and how?

MR. TIGUE: Well, I would think --

MR. MAC DONALD: May I read her one question, Judge, before we recess.

THE COURT: Very good, we will get the jury in.

(In open court, jury present.)

MR. MAC DONALD: Your Honor, we would at this time renew our offer of Government's Exhibit 83 for identification, the previously identified tax return.

THE COURT: The '71 tax return as limited is received in evidence. That is Government's Exhibit 83 for the year 1971.

xx (Government's Exhibit 83 for identification, was received in evidence.)

MR. MAC DONALD: Question No. 31 on the 1971 1040 for Jackson D. Leonard says:

"Did you at any time during the taxable year have any interest in or signature or other authority over a bank, securities or other financial account in a foreign country, except in a U. S. military banking facility operated by a U. S. Financial institution?"

And the no box is checked and the yes box is left blank in that return.

THE COURT: Does that complete our business for this afternoon?

MR. MAC DONALD: Yes, your Honor.

THE COURT: Ladies and gentlemen, we are going to sit tomorrow, as I said, only in the morning and not in the afternoon. Therefore, we will convene a little bit

earlier than usual, and I will see you at 9:30, not 10 o'clock but 9:30 tomorrow and we will sit until 1.

You are excused until 9:30 tomorrow. Do not discuss the case with each other or with anyone else.

(The jury left the courtroom.)

MR. TIGUE: Your Honor, I was just wondering about our scheduling. Would I plan to talk to Mrs. Brooke for a little while and then, I guess, the Government is resting and we will have motions and so forth.

Will we do that tomorrow morning at 9:30? I am worried about the jury.

THE COURT: Well, I would assume that there may be further questions of some kind. Perhaps there will not be. I would assume there might, and that might take some time. And after that I assume the Government will take whatever steps it takes and then I will act as counsel importune me. All right?

MR. TIGUE: Yes, your Honor.

(Adjourned to January 17, 1975 at 9:30 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Marion Bardes (Resumed)		430	447	
Emil A. Nothofer	450	459	473	475
Harris Egan	479	504		
Eva Eileen Brooke	509			

EXHIBIT INDEX

Government	Identification	In Evidence
80		456
19		458
94	473	475
79		476
81		503
83		524

Defendant	
X	473
Y	477

UNITED STATES OF AMERICA

vs.

74 Cr 599

JACKSON D. LEONARD

January 17, 1975
9:30 a.m.

(Trial resumed, jury present.)

THE COURT: Good morning.

Ladies and gentlemen, I wanted to repeat to you, in connection with the testimony of Mrs. Brooke yesterday and the admission into evidence of the 1971 tax return to the extent that I admitted it into evidence, that again, this testimony is not proof of any charge that is in the indictment. It is only proof going to the element of the wilfulness of the defendant if and when you reach that element in your deliberations. But it is not proof of anything else.

And you will recall I earnestly instructed you yesterday on that score with regard to certain other proof that was let in. This is a repetition to you of the same kind of instructions. You are to regard this proof in that light and in that light only.

All right. Go ahead, Mr. Tigue.

EVA EILEEN BROOKE, resumed.

THE COURT: Mrs. Brooke, you are still under oath.

CROSS EXAMINATION

BY MR. TIGUE:

Q Good morning, Mrs. Brooke?

A Good morning.

Q Mrs. Brooke, you came from England yesterday, arrived yesterday afternoon?

A I did.

Q Mr. Leonard and Mr. Brooke knew each other for some 25 years or more, did they not?

A They did.

Q And your husband was an officer, was he not, of a company called Kerr McGee?

A He was.

Q Can you tell us when you first met Mr. Leonard and/or Mrs. Leonard?

A In 1970.

Q What was the occasion on which you met them? Was it here in New York?

A It was here in New York.

Q And was this in connection with the discussions that Mr. Leonard and Mr. Brooke were having with respect to the possibility of becoming partners in business?

A They did mention that, yes.

Q And was that the main purpose of the meeting or was it social?

A I have no idea why they made the appointment, but I think it was social, because I was invited and Mr. Leonard's wife was invited also.

Q You were living in Oklahoma at the time?

A I was not, no.

Q Where were you living at that time, Mrs. Brooke?

A I was still then a resident of England. I was here on a visit.

Q And where did Mr. Brooke live at that time?

A He had been living in Oklahoma.

Q You were both invited to come to New York?

A We met in New York, yes.

Q And you had lunch or diner together?

A We had lunch at the 21 Club.

Q Can you give us a date on that, please?

A November. Was it November? November. We made so many appointments that I cannot, I'm sorry, be specific about exact dates. I cannot in my mind be specific about them. I know I wrote them down in my affidavit.

Q Now, Mr. Brooke was a talented man in his business? He had received offers for employment other

opportunities, had he not?

A He certainly did, yes.

Q And those offers were coming at a time when Mr. Leonard also wanted him to go in business with him?

A Yes.

Q The first meeting you had with Mr. Leonard and Mrs. Leonard and Mr. Brooke was sometime in November of 1970?

A Yes. I think it was.

Q And --

A But we met more often in '71.

Q And when did you and Mr. Brooke get married?

A '71.

Q Can you recall the next meeting after November of 1970?

A Was it April '71?

Q Would the date be February 22, 1971, refreshing your recollection?

A The might well have been. I was over here then, yes.

Q And Mr. Brooke was back again, in from Oklahoma?

A From Oklahoma.

Q And did you have lunch here in New York?

A Yes.

Q Did you have diner?

A With Mr. Leonard?

Q Yes.

A Not at that time.

Q And after the February 22nd meeting, can you tell us when the next one was, to the best of your recollection?

A Yes. It was sometime in July, at his apartment.

Q And that's when you had the conversation which you related yesterday, is that right?

A If that's so.

Q At these various meetings, there was constantly discussed, was there not, the possibility of Mr. Brooke and Mr. Leonard becoming partners?

A This was always brought up, yes.

Q Now, there came a time when these discussions terminated; Mr. Leonard and Mr. Brooke decided they would not enter business together, is that right?

A That is so.

Q Did there come a time when Mr. Brooke informed you that he had shown a plant in Mississippi to Mr. Leonard?

A Yes.

Q And he and Mr. Leonard toured the plant together,

did they?

A I have no idea. I wasn't there.

Q You were told that by Mr. Brooke, weren't you?

A Yes. He said that he had met Mr. Leonard down at Columbus.

Q And did he tell you that as a result of that meeting, that Leonard said he was going to sue the firm of Kerr McGee?

A Not at that particular point.

Q When did he tell you that?

A Sometime later.

Q Do you recall when?

A As far as I remember, the first inclination we had was when Mr. Leonard met us in Miami, when we were coming back from vacation, and --

Q Can you please give us a date?

A I think it was November.

Q Of what year?

A '71.

Q And at a point, Mr. Leonard said that he was going to sue Kerr McGee for about $25 million?

A I have no idea. I wasn't in on the meeting. I was upstairs, and my husband and Mr. Leonard were downstairs discussing this. I later joined them, but they had already gone through it.

Q After that meeting, did you husband tell you that Mr. Leonard was going to sue Kerr McGee for some millions of dollars?

A He didn't mention any figure, but he said Mr.

Leonard was going to sue Kerr McGee.

Q And did he say that that was based in part on the inspection of the Mississippi plant which your husband had shown him?

A No, he said it was based on things that had happened long before my husband joined the Kerr McGee corporation.

Q Did he tell you in essence that Mr. Leonard claimed --

THE COURT: Could you speak up.

Q Yes. I am sorry. It's usually the other way around. The lawyers usuall ask the witness to speak up.

Did your husband tell you that Mr.Leonard claimed that in essence Kerr McGee had committed a fraud on him and that he was going to sue them because he discovered this alleged fraud when he observed the plant in Mississippi?

A He did say this, yes.

Q And did he also say that he regreted it, but it would inevitably come out that it was your husband who had shown Mr. Leonard the plant in Mississippi?

A This was not true, because my husband in fact said that in no way could Mr. Leonard have seen what he allegedly saw.

Q Yes. But your husband did tell you that Mr. Leonard claimed that he would have to be a witness because of the plant inspection, is that right?

A Yes, he did.

Q I mean I irrespective of whether that was true or not, that was told to you?

A Yes, it was.

Q And were you present at a discussion where Mr. Brooke stated that he would be embarrassed by this and that he did not look with favor upon having to be called as a witness in connection with that litigation?

A He never mentioned this. It didn't worry him in the least.

Q Now, were there telephone conversations between Mr. Brooke and Mr. Leonard in 1972?

A There were.

Q And you knew --

A Two.

Q --you knew that because you listened in to the telephone conversations at the extension?

A I was asked to by my husband.

Q You took notes during the course of that discussion?

A In longhand.

Q And that was with the idea of being a witness against Mr. Leonard at some future date?

A No, merely to -- my husband thought that Mr. Leonard might be taperecording his replies or that somebody else was listening in on an extension on the phone.

Q And did you ever tell anyone that if that was so that you would be a witness to what the conversation was between you and Mr. Leonard?

A This was never discussed in any way.

Q Mrs. Brooke, did you sign an affidavit on May 22, 1974?

A I did.

Q And is this a copy of that affidavit of that date?

I am showing you Defendant's Exhibit AE for identification.

A It is.

MR. TIGUE: I offer in evidence, your Honor, Defendant's Exhibit AE for identification. It's a copy of 2412A-2, with which the Government supplied me.

MR. MAC DONALD: No objection.

THE COURT: Received.

(Defendant's Exhibit AE for identification, received in evidence.)

Q Mrs. Brooke, would you take a look at page 4,

I believe, at the affidavit, paragraph 9, and just read that sentence to yourself and tell us if that refreshes your recollection as to whether or not you had listened in on the telephone conversation with a view toward being a witness?

A No. This is not the idea at all. I was merely witnessing what my husband was saying and what Mr. Leonard was saying, but not with a view to being a witness for Kerr McGee Corporation. I was in no way involved in this, myself.

MR. TIGUE: May I read part of that paragraph 9, your Honor?

THE COURT: Yes, you may.

(Mr. Tigue read to the jury from Defendant's Exhibit AE.)

MR. MAC DONALD: The request was to read paragraph 9.

THE COURT: He read half of it.

MR. MAC DONALD: I thought the bottom half, which speaks of the same subject, should be included.

MR. TIGUE: I will be delighted to.

THE COURT: Go ahead.

(Mr. Tigue read further to the jury from Defendant's Exhibit AE.)

Q You listened in on the March 2nd, 1972 conversation, is that correct?

A I did.

Q And also on the June 30, 1972 conversation?

A I did.

MR. TIGUE: I wonder if we might have the original, your Honor. I marked the copy and I don't have the appendix.

THE COURT: Yes. Would you gentlemen step up just a moment, please.

(At the side bar.)

THE COURT: Mr. MacDonald, do you have this?

MR. MAC DONALD: Last night, the handwritten one was obtained by Mr. Tigue from Mrs. Brooke. This morning, Mrs. Brooke said Mr. Tigue had not asked for the first draft of the affidavit.

MR. TIGUE: Because I was unaware of its existence.

THE COURT: You have both of these exhibits at this point?

MR. MAC DONALD: Yes.

THE COURT: Shall I re-mark my copies?

MR. MAC DONALD: I assume Mr. Tigue is going to put them in evidence.

MR. TIGUE: Yes, I intend to.

THE COURT: I want the record to show that they were furnished.

MR. TIGUE: Yes. I received this immediately before Mrs. Brooke took the stand this morning, so I haven't read it completely.

THE COURT: All right. I just wanted to be sure.

MR. MAC DONALD: Judge, I have given you another copy of 3512. You wanted to give it to her.

THE COURT: All right.

(In open court.)

BY MR. TIGUE:

Q And the affidavit you have before you, Mrs. Brooke, which is Defendant's Exhibit AE, that is an affidavit in a lawsuit entitled "United States District Court, Southern District of New York, Jackson D. Leonard, DBA, doing business as J. D. Leonard and Associates and Leonard Process Company, Inc., plaintiffs, against Kerr McGee Chemical Corp., defendant."

A That is what it says here.

Q Yes. That is the affidavit that you signed, is that right?

A That's right.

Q And that affidavit was prepared for you by the attorneys for Kerr McGee, was it not?

A It was, at their request.

Q Yes. And they told you it was in connection with that litigation?

A Yes.

Q Now, in connection with that litigation, there were depositions taken, were there not, testimony given before trial?

A (No response.)

THE COURT: Do you know what that means?

THE WITNESS: No. I'm sorry.

Q Sorry.

Did it come to your attention that there was testimony given under oath prior to the trial? For instance, Mrs. Brooke, what the lawyers call a deposition, where someone testifies? You are not aware of that?

A I wasn't aware of that, no. We did not discuss this in great detail, because it had nothing to do with me.

Q Well, do you remember back on April 10th, 1974, last year, that some lawyers came to your home in Oklahoma?

A Unfortunately, yes. Two days before my husband died.

Q And was that for the purpose of taking his testimony under oath?

A Yes.

Q If I may use the word deposition for that --

A I see. I'm so sorry.

Q I believe yesterday you told us that Mr. Brooke passed away on April 12th, 1974?

A He did, two days after he gave what you call -- the deposition?

Q The deposition, yes. Now, when he gave that deposition, of course he was very gravely ill, was he not?

A He had been under morphia for a month and the doctors had told me that he was in semi-coma for about two weeks. He was only lucid very occasionally.

Q And you strongly felt that that deposition was completely unnecessary, did you not?

A I certainly did. I was very much against it.

Q And it was your impression that it was Mr. Leonard's lawyer who had asked for that?

A I didn't know who had asked for it.

Q Did the attorneys for Kerr McGee ever tell you that they insisted on that deposition over the objection of Mr. Leonard?

A No, they never discussed this with me. I've had very little contact with Kerr McGee since my husband died.

Q And do you know a man by the name of William Schurtman?

A I met him on one occasion at the 21 Club in the company of Mr. Leonard and my husband.

Q And he was also at your home on April 10th, 1974?

A He came down, yes.

Q And that was in Oklahoma?

A In Oklahoma City.

Q And were you aware that under the terms of the

testimony which was to be taken that he also was to ask questions of your husband?

A I had no idea.

I wasn't present.

Q Now, sometime after Mr. Brooke passed away, the attorneys for Kerr McGee asked you to prepare a document, did they not?

A Yes, they did.

Q And do you have that document with you today, Mrs. Brooke?

A My own written?

Q Yes, ma'am.

A I don't have it here. I'm very sorry.

MR. MAC DONALD: I have it.

A (Continuing) I think you have a copy yourself.

Q Yes, I do have a copy.

MR. MAC DONALD: This is the original.

(Handing.)

MR. TIGUE: Let the record reflect that I am marking as Defendant's Exhibit AF, four handwritten pages which Mr. MacDonald just supplied to me, and I am marking a third piece of paper, which is Defendant's Exhibit AG, that Mr. MacDonald has also given to me.

Q Mrs. Brooke, is Defendant's Exhibit AF the

handwritten notes of the document the attorneys for Kerr McGee asked you to write?

A This is the handwritten.

Q I see. And Defendant's Exhibit AG, is that the draft of an affidavit which we have called AE?

A This is, yes.

MR. TIGUE: I offer in evidence, your Honor, Defendant's Exhibit AF and AG.

MR. MAC DONALD: No objection.

THE COURT: Received.

xx (Defendant's Exhibit AF and AG for identification, were received in evidence.

Q Now, Mrs. Brooke, would you please tell us how it came about that you wrote up the document which is AF, the one in the center?

A I was asked by the attorneys of Kerr McGee to write my recollections and the fact that I listened in to two telephone conversations. My husband had already written these noes in full when he was in good health, so they knew that I had listened into these telephone conversations.

I wrote this out very soon after my husband died. I wrote it in about ten minutes. I didn't think that it was relevant to the Kerr McGee suit at all.

Q Did the attorneys for Kerr McGee tell you that

they wanted you to sign an affidavit in the Leonard- Kerr McGee litigation?

A They said that they would like me to do this since my husband was -- had died and they felt that I as his wife should do this.

Q Would you tell us how long after April 12th this was written?

A It was written in May.

Q The final affidavit was dated May 22nd. Could you use that as a frame of reference as to when the hand-written notes, which are Defendant's Exhibit AF, were written?

A A few days before.

Q And before you wrote Defendant's Exhibit AF --

A This is my handwritten one?

Q Yes, the one in front of you. There is a little tag on the top there which is a means for identifying it.

The handwritten notes AF, before you wrote that in ten minutes, you had an opportunity to review the complete file of the Kerr McGee litigation, did you not?

A No. I did not read it in full. It was very, very thick and I can honestly say I was not in the least bit interested in the case at all. So I didn't want to spend any time on it.

Q I am having a little difficulty reading here. Would you please read the first paragraph of your notes?

A Well, it says, "Having read the complete file on the meetings and telephone conversations between Jackson Leonard and my late husband, John L. C. Brooke, my comments are as follows:"

But I didn't read it in full because that would have taken days, believe me.

Q The document that you did look at, Mrs. Brooke, that includes the depositions that we used of Mr. Leonard in connection with that case?

A I hadn't seen it at the time. Subsequently I did.

Q And when were you shown it subsequently, madam?

A After I wrote this.

Q Can you tell us when, please?

A I have no idea, quite honestly, no. I was under very great stress at that time. My husband had just died.

Q Would it have been like within six months? We are talking about May of 1974, and this is now about eight or nine months later. Couldyou give us just a general time when you read Mr. Leonard's deposition?

A Oh, it was before, about October.

Q Can you tell us how you came to read that? I

mean who showed it to you and under what circumstances?

A One of the attorneys of Kerr McGee showed it to me.

Q And did he say for what purpose he had shown it to you?

A Just to -- well, because he wondered if I would be interested in the comments that my husband had made on Mr. Leonard's -- deposition?

Q Yes, madam, deposition.

A Right.

Q And you read it.

A Yes, I did.

Q And that came to some 6,000 pages, did it not?

A Oh, heavens nc. This was just a small -- these comments that I read were only, I think, a few pages, the particular part that might have been of interest to me.

Q You were shown a portion, then, of the total deposition?

A Yes.

Q Could you tell us when the first time was that it was indicated to you that you might be a witness in this case?

A Yes. The beginning of December, last year, '74.

Q And other than the conversations you had with

Mr. MacDonald, did the attorneys for Kerr McGee indicate to you that you might be a witness in this case?

A They had no idea, I don't think, that there was any case, I mean, that there was this case.

Q Are you making an assumption or did they tell you that they were unaware of a criminal case against Mr. Leonard?

A I don't think they did know.

Q Now, when you were asked to testify in this case, you called an attorney, did you not?

A Yes.

Q And was that one of Kerr McGee's attorneys?

A No. I twas my own private attorney.

Q And what was his name?

A John Edwards.

Q And then thereafter you called the attorney for Kerr McGee, did you not?

A On a friendly basis. He is a personal friend. Mr. Robert Walsh.

Q And Mr. Robert Walsh is one of the attorneys who is handling the litigation which we call Leonard versus Kerr McGee, is that right?

A He is.

Q And he was the attorney who showed you the depo-

sitions of Mr. Leonard?

A Part of it.

Q And he told you that you should come and give as much cooperation in this case as was necessary under the circumstances, did he not?

A He said that he would leave it completely to me. But since I was subpoenaed, I felt that I should appear.

Q Yes. And in addition to that he told you, did he not, "Come to New York and give as much cooperation as necessary under the circumstances."

A He didn't tell me.

Q He said that, though, did he not?

A He just said, "If you feel that you have to, then go."

MR. TIGUE: I wonder if I might as Mrs. Brooke to read her three-page memorandum, because I frankly have difficulty reading her handwriting. It is in evidence.

A You want me to read it?

THE COURT: Don't you have the original?

MR.TIGUE: I do, your Honor, but --

THE COURT: You mean into the record?

MR. TIGUE: Or to the jury. I'll try to read it.

THE COURT: I don't really see any need for that.

I think it is rather clear.

THE WITNESS: I have no interest in Kerr McGee case.

THE COURT: If you look at the original -- I don't think it needs be read into the record at this point.

Q Could you take a look at your handwritten notes, which are Defendant's Exhibit AF? You discuss in there this meeting that you had with Mr. Leonard and Mrs. Leonard.

A Which page?

Q I believe it is on the second page.

A At the top?

Q The part where Mr. Leonard says he had a Swiss bank account. Would you read that portion, please.

A From "Mr. Leonard was extremely anxious for my husband to join him in business." Shall I go on from there?

Q Yes.

A "And many tempting offers were made, namely, a check for $10,000, which Jack refused."

This was offered at the 21 Club.

Q Yes, now, in the margin, does that say, "Didn't hear or see"?

A I didn't. I was not present.

Q Will you please continue in that paragraph.

A And subsequently at their own apartment, Mr. Leonard's apartment, that is, one evening I was brought into the conversation and told by Mr. Leonard that I would not settle in Oklahoma and could I not persuade Jack -- my husband -- to join him in business and live in an apartment he owns at Sutton Place, plus $100,000, any of which he would deposit in a Swiss bank, making it easier for me to return to Europe to see my children.

This latter offer we made in writing, but unfortunately Jack, my husband, threw it in his waste basket at the Plaza.

This I did say.

THE COURT: All right. That's enough. There's no question.

Q Now, that is the end of the discussion, isn't it, about the meeting which took place in Mr. Leonard's apartment, is that right?

A That is the end of my written --

Q Yes. That's the question. And when you wrote Defendant's Exhibit AF, your handwritten notes, you didn't

put anything in there where Mr. Leonard said he has aSwiss bank account, did you?

A No, I did not, but I was asked, having written this, to remember more and write literally everything that I can remember about my meetings with Mr. Leonard, and that is why my final affidavit is here, because I then remembered and wrote in full -- I didn't write, I told in full, everything that I recall. I didn't think initially that it was necessary.

Q You didn't regard it as important for relating that conversation for your purposes?

A I didn't think it was important for me or for Kerr McGee. My statement surely will not help them in any way.

Q You took defendant's Exhibit AF, your handwritten notes, to the lawyers for Kerr McGee, did you not?

A I didn't take them. They collected them.

Q They came to your home?

A Yes.

Q And then did there come a time when you went to their office?

A No.

Q Did they come back to your home?

A No. This was over the phone. The time that they

came to my home was when the final affidavit -- affidavit?

THE COURT: That's right.

Q Yes.

A Yes -- it was typed, and Mr. Walsh and his secretary -- and you will see that she is a witness, and that was when I signed it.

Q After the handwritten notes were picked up, you then talked to the attorneys of Kerr McGee on the telephone, is that right?

A One, yes.

Q Who was that?

A Mr. Walsh.

Q And --

A On a friendly basis.

Q And did he suggest -- was he the one who suggested that perhaps Mr. Leonard had an account of his own?

A No.

Q The first mention of that came from you, is that correct?

A Of course.

Q Now, there is another exhibit before you -- let me see if I can find it, so a copy as well -- that is Defendant's Exhibit AG in evidence. That is the intermediate draft, isn't it?

A It is.

Q And if you look at the last page, you will notice that it's typed in "May 22, 1974."

A It is.

Q Was that prepared for your signature, and then you supplied additional information on that date?

A I haven't -- I have not read this --

Q Will you take a minute, please --

A -- because it is very similar to this one, but it wasn't complete and not as accurate as I wished it to be. If you will see, in paragraph 7, there are two lines which aren't written in.

Q Yes. And this was prepared for your review and you looked at the draft of the affidavit, is that right?

A I did.

Q And you gave additional information?

A I didn't give very much additional information as I can recall, but I did say that this was incomplete, and I'm not the type of person who signs things that aren't complete and accurate.

Q Now, I notice between the draft and the final, the date November 15, 1970, has been deleted.

A What?

Q Let me see if I can help you.

A November 15, 1970.

Q Yes, ma'am.

You will notice it was in the draft and wasn't in the final.

A Quite, because that was a Sunday night, and in fact I was not at that meeting. Mr. Leonard had my husband to dinner, and I was at that time still in England.

Q You determined those facts when you were given the draft affidavit, is that right?

A Yes.

Q In other words, you were asked to sign it or to confirm it, and you said November 15, 1970 is incorrect, "because I was in England."

A Yes. My passport will show that.

Q Did you consult your passport when the affidavit was presented to you?

A Yes.

Q And you told the attorneys that they put a wrong date in there, is that correct?

A Yes.

Q The attorneys were the people who put the dates in here, were they not?

A No, the most -- apart from that one date -- well, you see, they consulted with my husband's secretary, who had

his diary, and she gave the November 15th date, but I was not present at that -- at that meeting.

Q And then I noticed there's a date down there of February 22, 1971. Do you know whether or not --

A 22, 1971?

Q Yes. If you look at the affidavit. The draft and the final, in both.

A The final one?

Q Well, let's look at the final one, February 22, 1971.

A Yes.

Q Do you know whether Jackson Leonard was in Sidney, Australia, during that period?

A Well, if I met with him he must have been in New York.

Q Now, if you will go back to your notes for a minute, Mrs. Brooke -- that again is Exhibit AF -- I notice at the end you make the following date: "But I would like to say that both Mr. and Mrs. Jackson Leonard have always been kind and friendly toward me."

A That's indeed true.

Q Yes. And that was deleted, was it not, when the affidavit was prepared?

A I think that's -- yes, it was, and I do recall

that I didn't want this deleted, but legally my own writing was completely personal, but obviously in court, people don't want to hear personal things.

Q And the attorneys thought it would be better to remove it, did they not? They told you that?

A Yes.

Q I notice in the final affidavit in paragraph 3, there's a reference to Mr. Leonard's wife as a charming girl.

Did they ask to have that deleted also?

A Yes, and I said that I didn't want this deleted.

Q Now, if you will look at the final affidavit, paragraph 6 --

A 6.

Q Yes, ma'am. And if you will read the third sentence in: This is the meeting of September 20, 1971, is that correct?

A That's right.

Q And --

A My late husband and I again met with Mr. Leonard at the Blue 21. Mr. Schurtman was present.

Q You needn't read it. I am going to read a sentence and ask you a question.

THE COURT: Mr. Tigue wants to ask you a ques-

tion.

THE WITNESS: I'm sorry. I thought you said you wanted me to read it.

Q I am sorry, I can't make myself clear. The third sentence said, "Mr. Leonard talked mostly of the alimony he was paying his former wife and I understood that Mr. Schurtman had handled all of Mr. Leonard's divorce proceedings and was presently handling a violation on the Rivera, in which his wife was concerned."

A That's right. That's written here.

Q That was not in your original handwritten notes, was it?

A No, because -- because, as I say, I just wrote this very quickly, and I didn't write everything that was said.

Q And it was the attorneys who asked that that be put in?

A No. They -- they didn't ask that it be put in. They said, "Will you please remember and tell us everything that -- that you can remember that was said between Mr. Leonard, Mrs. Leonard, Mr. Schurtman" -- my husband and myself.

Q Did Mr. Walsh indicate that you should pay particular attention to information that maybe derrogatory to

Mr. Leonard?

A No.

Q You knew that the information you were giving was going to be part of an affidavit filed in this very court, didn't you?

A In this courthouse?

Q Yes.

A No, I didn't.

Q Did you have any discussion with the attorneys about the caption which says United States District Court, Southern District of New York?

A Where is this?

THE COURT: He is drawing your attention to what's written at the very top, Mrs. Brooke.

A Yes, but I didn't think that my affidavit would be of any interest to them whatsoever, and I still don't think it would be, quite honestly.

Q Did Mr. Walsh tell you the use to which your affidavit would be put?

A No. He didn't. It was merely --I can't remember exactly what he said, but he said it was merely a formality that I have this written out.

Q Then did you say this morning, Mrs. Brooke, that you met Mr. Leonard for the first time in November of 1970?

A It was sometime in '70.

Q You have no specific recollection of November?

A It certainly wasn't November 15th.

Q Yes.

In your handwritten notes actually there are no dates except the two telephone calls which you overheard between Mr. Leonard and Mr. Brooke, is that correct?

A That's right. I am not very good at dates, as I say.

Q And really it was the attorneys who assembled all the dates and put them in your affidavit, is that right?

A I am -- I also rang my husband's former secretary -- because he was dead -- and confirmed with her his diary as near as possible, so I could be more accurate?

Q And it was the attorneys really who were insisting on the precision of dates, if they could, is that correct?

A They weren't pressing me.

Q Did you object when you inserted the dates in because you didn't know, or you didn't know if they were accurate?

A I didn't object, except for the November the 15th one.

Q Before you wrote your handwritten notes, you did

look at some of the files, didn't you, of the Kerr McGee litigation?

A I just had the two telephone conversations, the notes of which my husband had typed out.

Q And did they also show you the deposition or the sworn testimony of Mr. Brooke, which was taken on April 10th?

A No.

Q Let me show you a copy.

A No. I have never read it until you showed it to me yesterday.

Q This is Defendant's Exhibit AH that I am referring to. You have never read it before?

A No, I have not read it, because --

THE COURT: Well, that's an answer.

MR. TIGUE: Yes.

Q Would it refresh your recollection if I indicated on the last page when it was typed up? Would it refresh your recollection?

THE COURT: As to what?

MR. TIGUE: As to whether or not she recalls actually having read this, your Honor.

Q Will you tell us if that refreshes your recollection as to whether or not that was one of the documents

that you referred to in your handwritten notes when you said you had read the entire file?

A No, I hadn't read it.

Q Now, with respect to the conversation that was had at Mr. Leonard's apartment, would you agree with this statement.

"Do you recall what was said specifically about conversations, if anything".

MR. MAC DONALD: Are you reading from AH?

MR. TIGUE: I am reading a statement and asking the witness if that statement refreshes her recollection. May we approach the bench, your Honor?

THE COURT: In that form I would sustain an objection.

Q Do you agree that what really happened is that there was a discussion about depositing money in a bank in Australia rather than Switzerland?

A Certainly not. It was Switzerland.

Q Would you take a look at Defendant's Exhibit AH again, the affidavit, and please take a minute to read this, if you would, and tell us if that refreshes your recollection.

THE COURT: The objection is sustained. There's no recollection to be refreshed, Mr. Tigue. She has a

recollection.

MR. TIGUE: May I have an additional minute to read this document?

THE COURT: You may.

(Pause.)

THE COURT: Ladies and gentlemen, due to the length of the morning, we will take the first of two very short recesses at this moment.

(Recess.)

MR. TIGUE: May I proceed, your Honor.

THE COURT: You may.

BY MR. TIGUE:

Q I'm somewhat confused, Mrs. Brooke.

Would you fix as best you can, the date that you were in Mr. Leonard's apartment with Mrs. Leonard and Mr. Brooke?

A Yes, I can.

It was towards the end of July. I recall it because my daughter was visiting with me.

Q And it is impossible to fix any particular date in July, is that correct?

A I cannot recall the exact date. I think she arrived on June the 30th and she was here for about a month. So it was towards the end of July.

Q The first time that you were asked about this meeting, you said it occurred on November 15, 1970, did you not, when you talked to the Kerr McGee attorneys?

A No, I don't say that.

Q Do you have your draft affidavit? That is

Defendant's Exhibit AG.

A I told them that this was wrong.

Q This first sentence in paragraph 4, where it says, "My first meeting with Mr. Leonard took place on approximately November 15, 1970 at Mr. Leonard's apartment in New York."

You were not --

A Where does this say?

Q I'm sorry. This is Defendant's AG, the draft, in paragraph 4.

A 4?

Q I just read the first sentence. Would you like me to reread that?

A Yes. And this was not right.

Q And that was not something that you had told the attorneys?

A No.

Q It didn't happen that you told them that and then it was discovered that you were not in the country then?

A No. I said, when I read it, "This is not right," because I didn't meet him on the 15th of November.

Q Didn't you ask the attorney where he got that information from?

A No, I didn't. I wasn't interested.

Q You told him to change it in any case, is that right?

A I told him, yes.

Q And in paragraph 2, that same date is deleted and then in paragraph 4 that date is also deleted, is that right? When I say "that date" --

A The same one you are looking at now?

Q Yes, ma'am, November 15, 1970, yes.

And you said that there was one other occasion that you met with him but you do not recall the date, is that right?

A That's right. As you now know, I am no good at dates.

Q Now, this conversation that Mr. Leonard and Mr. Brooke were having in July of '71 in his apartment was essentially a business conversation where they were talking about the offers and counter offers to go together, is that right?

A This is correct.

Q And if I may just read from the bottom of page 1 of your handwritten notes, it says, "My meetings with Mr. Leonard were always social and, apart from two occasions, his wife was always present, a charming girl, and we seemed to have much in common to discuss. Therefore we were only barely aware of our husband's conversations."

Was that referring also the July 1971 conversation?

A No, because I was brought into this by Mr. Leonard, who I think said in some statement that we had recently moved to Oklahoma City, and he was very anxious that my husband join him in business. And so this is why I was brought into the conversation.

Q Was this the very first occasion that you had met Mr. Leonard?

A In his apartment?

Q Yes.

A No.

Q Were you the person who supplied the information for the draft affidavit which said -- again I'm on paragraph 4 -- "My first meeting with Mr. Leonard took place on approximately November 15."

Was it your statement to the attorneys that it was at the first time you met Mr. Leonard that he told you he had a Swiss bank account?

A This was not the first time I met him that he said this, no.

Q And you had not told the attorneys for Kerr McGee that?

A No, I had not.

Q Now, if I can go to the discussion about placing $100,000 in a Swiss bank account, were handwritten notes I believe say that "any portion of that $100,000 could be deposited into the Swiss bank account." Is that right?

A That's right.

Q And then when the affidavits were drawn up, that was changed to a 50-50 split, is that right?

A That's right.

Q Could you tell us how that came about?

A Because I do recall that the sum of 50,000 and 50,000 was discussed.

Q You didn't recall that when you wrote the handwritten notes?

A I didn't think it was relevant at that time.

Q Did the attorneys suggest that perhaps a portion of the $100,000 would have to be recorded on the books and therefore maybe the conversation wasn't any portion of the $100,000 would be paid for a Swiss bank account?

A As I said previously, I was asked to refresh my memory and be more explicit in everything, so therefore I did go back in my memory and remembered as much as possible.

Q Now, before you testified yesterday, Mrs. Brooke, did you have occasion to read your handwritten notes?

A Before yesterday?

Q Yes, ma'am.

A No.

Q Did you have occasion to read your final affidavit?

A I went through it, yes.

Q Did you have occasion to read the draft affidavit?

A This final one?

THE COURT: No, the draft.

Q The draft.

THE COURT: The draft that the attorneys prepared, in which you made corrections, deletions and so on.

THE WITNESS: I am so sorry --

THE COURT: This is Exhibit AG, which we call the draft.

Q AG.

A No, I did not.

Q Was Mr. MacDonald supplied a copy of the final affidavit -- I better get my numbers here -- that's AE before you, the final affidavit.

A Yes.

Q And you went over that briefly with him?

A Yes.

Q But you didn't give him, did you, a copy of your handwritten notes?

A Yes.

THE COURT: Yes, you did not.

Q All right. Would you clear that up?

I -- I am not clear --

A He did not have them. I --

Q You never showed it to him, did you?

A I don't recall that I did.

Q And you didn't mention it to him?

A Yes. I remember saying in December that I had

written these notes very quickly.

Q Did you have them with you when you came in December?

A No, I don't think I did, no.

Q After you gave the originals to the attorneys for Kerr McGee, how did you get them back in your possession, the originals?

The ones that are before you.

A I requested to have them back.

Q Could you tell us when you did that?

A After the final affidavit.

Q Would that be when you were preparing --

A That was in May, was it?

Q Yes.

Q You requested the original handwritten notes to be given back to you in May. Was there a particular reason for that?

A I felt that I would like to have them, since I had written them, and it was to do with occasions that my late husband and I had had. I just wanted them for personal reasons.

Q Could you tell us when the last time it was that you spoke with Mr. Walsh? I believe he is the attorney for Kerr McGee?

A Yesterday.

Q Was that before or after you testified?

A After. It was on a purely personal basis. He wanted to inquire of my health.

Q But it's perfectly clear that you never showed the handwritten notes -- it's perfectly clear, is it not, that you never showed Mr. MacDonald the handwritten notes or the draft affidavit, is that correct?

A Until yesterday, was it --

Q Yes. I am sorry. I misspoke. Before you testified on direct examination --

A He had not seen them.

Q Yes.

Now, do you recall, back last April, Mr. Leonard called you and told you that he wanted to see Mr. Brooke and asked about his state of health?

A That's correct.

Q And did you refuse him an opportunity to visit Mr. Brooke?

A I did not refuse. I said that it was really not possible, because it was two days before my husband died and he wouldn't have recognized Mr. Leonard, anyway.

Q When you came here in December, a month ago, did you call Mr. Leonard on the telephone?

A No.

Q Did you call him on the telephone before you testified here yesterday?

A No.

MR. TIGUE: I have no further questions.

REDIRECT EXAMINATION

BY MR. MAC DONALD:

Q On AG there's some handwriting in the upper left-hand corner. Did you place that handwriting there?

A Yes.

Q Does that include my telephone number and my address?

A It does.

Q And is it your recollection that you wrote that there during a telephone conversation that you and I had prior to your first visit to New York in December of 1974?

A That's right.

Q I show you Government's Exhibit 95 for identification, together with -- I will just ask you if you can identify 95 as being a Xerox of two pages of your now expired passport?

A That's right.

Q This morning, did you at my request, examine that passport and examine the visa issued by the United

States Embassy to you of the various entry and exit stamps?

A Yes.

Q In addition, did you examine two or three pages later, where a visa was issued to your daughter, Samantha, where it also bears an entry stamp?

A It does.

Q And at that time, did you have your recollection refreshed that your daughter Samantha was in the Plaza Hotel on the evening that you spent with Mr. Leonard and his wife in his apartment?

A That's right.

Q It is the date June 20th, not June 30th, 1971?

A That's the date that she entered the United States.

Q Do you have any recollection of how long she stayed on that visit?

A Approximately a month.

Q And did you enter with her and return to England with her on that trip?

A I did.

Q So was it on the entry end of the 30 days that you met with Mr. Leonard or the exit end?

A The exit. It was the night before I left for England.

MR. MAC DONALD: Nothing further.

MR. TIGUE: No questions.

MR. MAC DONALD: I will offer 95.

MR. TIGUE: No objection.

THE COURT: It may be received.

xx (Government's Exhibit 95 for identification, received in evidence.)

(Witness excused.)

MR. MAC DONALD: Government rests, your Honor.

THE COURT: All right.

Ladies and gentlemen, we will excuse you for a brief recess.)

(The jury left the courtroom.)

THE COURT: Motions.

MR. TIGUE: Yes, your Honor.

I have some, your Honor, if I may just have a minute.

May I proceed, your Honor?

THE COURT: You may.

MR.TIGUE: I would move, your Honor, to dismiss the indictment and for a judgment of acquittal with respect to both counts of the indictment.

First, with respect to 1968, I believe that the Government has failed to prove venue. The testimony in

the case is that the tax return was prepared in New York and that in the ordinary course of business it was mailed to New Jersey, and the stamp of the income tax return itself shows that it was received in the Philadelphia, Pennsylvania office of the Internal Revenue Service. I hope to have, your Honor, a case, which I believe was by Judge Weinfeld, but frankly I spent a little time preparing the cross examination of Mrs. Brooke, and I apologize for not having that case, but my understanding of the law is that the crime is committed not by the preparation, as it is in income tax evasion cases --

THE COURT: This is addressed now to count 2?

MR. TIGUE: Yes, it is, your Honor.

THE COURT: Very well.

MR. TIGUE: The crime is committed when a person subscribes and makes the return. The term "make" has been judicially described to mean the actual filing and of course "subscribing" means to sign it.

There is no evidence where the tax return was signed. The only evidence is that it was mailed to New Jersey. The only possible inference would be that it was signed in New Jersey and no permissible inference that it was signed in the Southern District of New York.

The income tax evasion cases are against me on

this point, but I believe the false statement cases are very much in my favor on this point, your Honor.

The rationale on these cases is that a man can lie to his accountant. He can give him false information and the accountant can prepare and deliver to him an income tax return. At a point he is confronted with either committing a crime or not committing a crime. He either signs it or doesn't. And where he is engaged in that activity is the venue.

Mr. MacDonald can fool me in a minute, but I don't believe there are any cases which support the propositions that merely because a return is prepared in the Southern District of New York, that gives it mere venue.

I have a number of motions, your Honor, should I pause or got through the list?

THE COURT: Mr. MacDonald, what's the most effective way to deal with this. Do you want to make notes and deal with them in a page or deal with them in each?

MR. MAC DONALD: Whatever your pleasure is. Frankly, I am thinking about the venue proceedings, so I was trying to duck answering it before I could --

THE COURT: All right. Let's get them all out.

Mr. Tigue, so I can focus on this clearly, obviously, the charge is that he makes and subscribes.

Now, passing the question of whether the subscription has to be proven to have been in New York, what is encompassed in the word "making". If he causes an accountant to prepare the return, is that a making by the taxpayer, as you understand it?

MR. TIGUE: No, it is not, your Honor.

THE COURT: But in this case he didn't personally make it, as we understand it. He caused somebody else to make it.

MR. TIGUE: I think I have a case, your Honor, It's United States versus Mahler, 181 Fed Sup, 901. It's an opinion of Judge Weinfeld of 1960 and my note says "Good case, defines when return made, not prepared, but filed."

That is what Judge Weinfeld determined as to the definition of "making".

THE COURT: That case will obviously bear inspection. But go ahead.

MR. TIGUE: And the statute is also in the conjunctive. He says, "He who makes and subscribes".

I submit that both would have to be performed in the Southern District of New York. In this case, we know that it was filed in Philadelphia, and the question is, where did it come from, where was it mailed from,

because it was received by mail in Philadelphia. I think that, number one, there's no making or filing, and number two, I would first of all submit that there's no evidence at all that he signed the income tax return.

THE COURT: In the Southern District of New York?

MR. TIGUE: Well, yes, in the Southern District of New York, clearly, but perhaps less clearly I would have asserted that there's no evidence that he signed the income tax return which is one of the elements in the charge.

THE COURT: He never signed it at all?

MR. TIGUE: Yes. There's no evidence that he signed it. No one said, "I gave it to Leonard and he signed it in my presence."

Your Honor may gather from the other exhibits --

THE COURT: That this is a jury question?

MR. TIGUE: Yes.

THE COURT: That I will conclude.

MR. TIGUE: I think even if that assumption is made, there is no jury question as to where it was signed, because the only evidence in the case is against the Government, namely, that it was sent out of New York in the ordinarly course of business.

THE COURT: All right.

MR. TIGUE: I just gave your Honor a copy of the

memorandum this morning which is also addressed to the year 1968.

I would make the same motion based on the cases that are contained in the Second Circuit, which are contained in the memo, and the theory is as follows, your Honor.

The man owns all the stock in a corporation. He really is the owner in every sense of the word. If he diverts money from that corporation and uses it for his personal benefit there are two lines of authority. One, the other circuits or some of the other circuits say that this is embezzeled income and is includable in gross income under Section 61, the general gross income section.

The other circuits, including Second Circuit, say if a man does that, what he is essentially doing is getting for himself a constructive dividend, even though it is not normally done.

So initially whether it is embezzlement or constructive dividend, it is income. I say it is a constructive dividend. That takes us to the next step in the 1965 Second Circuit case which says you must then look to determine whether or not it is a constructive dividend because if it is a constructive dividend, if there are accumulated or current earnings, number one, there is no

evidence in this case that there was any current or accumulated earnings because I believe the record is clear that the corporation was activated and initiated in 1968, and there was a loss for that year, as reflected in the books and records, which are Government's Exhibit 87.

So the case says if there are no accumulated earnings, profits, it is then a return of capital, which is not income of any sort.

So I would submit, your Honor, that even if you give the Government all favorable inferences, they have not proven that the money received from Treadwell, which is what we sometimes forget is the target here, none of that money was income. If there were checks kept by Mr. Leonard, that would not under the code constitute income. It would constitute dividends and since there were no profits, it is return of capital.

I would move at this time, your Honor, to strike from evidence Government's Exhibits 1 and 2 and the work papers which are put in evidence relating to that, because they were taken subject to connection at the beginning of the trial and certainly with respect to 1967, I think my argument is stronger. The Government made no connection with that whatever, and in connection with that I say Miss Bardes took the stand, and I thought on her direct testimony

she had sort of indicated that she was the author of the tax return and I guess I was wrong because she clearly indicated on the cross examination that she didn't know the first thing about Government's Exhibit 1, and I think that the Government hasn't joined up the evidence that is necessary to make the connection between Jackson Leonard and that income tax return. There's no evidence as to how it was signed, how it was mailed, where it was filed from. I notice that the face of the return has a stamp which indicates that it was filed in Manhattan, and while the case law is against me on that, I would think that the proof isn't even sufficient there on the matter of venue, and I would move to dismiss that count not only on venue but to strike those two exhibits from evidence, together with the work papers.

THE COURT: Let me be sure I understand.

This is the third motion. This is to do what?

MR. TIGUE: Government's Exhibit 1 and 2, and the related work papers, I think it's Government's Exhibit 80. I am not sure of the number, but if the Exhibits 1 and 2 are stricken, I don't have to worry about the other.

THE COURT: The theory as to why the '67 return should be stricken is what?

MR. TIGUE: There's no connection between

Mr. Leonard and that tax return. There is no evidence as to how the return was prepared, who prepared it, under what circumstances. All there is is the introduction of some work papers which it turns out that she knew very little about, which is also the basis of my motion.

I don't believe that the Government has done anything to connect them up. They simply have come in with a tax return which purports to have Jackson Leonard's signature on it and they make rather bald claims. It seems to me that that is not prima facie evidence. Any person could make a tax return and sign the name President Ford on it and file it with the IRS. I think it needs to be connected up.

And your Honor took it subject to connection and I don't know that there is any connection in the record.

THE COURT: Mr. Tigue, are you saying it's not sufficient that there is a tax return on behalf of Jackson D. and Susan Leonard in the signed, signed by Leskowicz, and the Leskowicz witnesses were here saying that they prepared such a return for this man for that year. Doesn't that --

MR. TIGUE: You notice I am not arguing as strongly as to '68, your Honor, because the man came in and testified --

THE COURT: Mrs. Bardes said she got the information for the '67 return from Mr. Leskowicz.

MR. TIGUE: I don't believe that's the testimony.

THE COURT: I have that in my notes. That's the only note I have on that witness.

MR. TIGUE: On cross examination -- I had planned a long-winded cross examination of her and I started to ask her,

"Q Did you prepare This return?

"A No.

"Q Do you know any of the handwriting that appears in the return?

"A No."

THE COURT: Mr. MacDonald, my notes say, verbatim, "Got info J.L. '67 return from Leskowicz."

MR. TIGUE: I think she says she got the information in the folder from Leskowicz, not the return.

THE COURT: In any event, I'll hear the other side on that. But it would seem to me from the fact that a return is there, that we have the preparation of it, that we can even on that alone assume that it went through the taxpayer into the hands of the Internal Revenue Service.

Your motion to strike is based on the sheer absence of proof that it in fact entered Leonard Jackson's tax return?

MR. TIGUE: It is based on the fact that the Government hasn't done anything but put the tax return in evidence. That needs to be connected up.

THE COURT: They put a tax return bearing the name Jackson D. and Sandra Susan Leonard, with a Social Security number on it and an address and schedule C, et cetera, et cetera. And we have had a witness here who, my recollection is, testified that she did the work up on a 67 return for Jackson Leonard for the firm that has signed the return.

MR. TIGUE: I guess we have a respectful difference, then, your Honor. I specifically recall asking

her in the cross examination about the return in great detail, and she kept saying she didn't know anything about it and that's why I kept my cross examination of her down to the bone, because I did show her the return and she said, "I've never seen it before, I don't know anyone's handwriting on here, I don'tknow how it was prepared, I don't know what happened to it after it was prepared."

She said, "I assume it was prepared by Mr. Leskowicz's firm, but I don't know."

I think it is pretty clear that she is not a preparer, she is simply a bookkeeper who was sort of a free-lance bookkeeper for the Leskowicz firm.

THE COURT: Denied.

MR. TIGUE: I would move to strike the testimony of Eva Brooke. Your Honor took that as a matter of discretion, discretion in that it was a subsequent similar action, and I would ask after the cross examination of Mrs. Brooke that that testimony be stricken, your Honor.

THE COURT: On what ground?

MR. TIGUE: On the ground that her testimony or the affidavit on which her testimony is based it seems to me is pretty clearly the product of the attorneys for Kerr McGee, who had an enormous amount of interest in this case. She had her handwritten notes, which did not say a word

about his tax returns.

THE COURT: Those are jury questions. I deny that motion.

MR. TIGUE: And I of course will have to renew my motions for a mistrial, which I know your Honor has already ruled on, and nothing has changed that.

THE COURT: Denied.

MR. TIGUE: I would move to strike from evidence the 1969 affidavit of Mr. Leonard and essentially the same grounds, namely that that too is a prior similar act, and I think that there has been very little evidence about the underlying facts of the preparation of the tax returns. There has been an enormous amount of evidence and testimony about the existence or non-existence of the income tax returns.

THE COURT: Denied.

MR. TIGUE: Also, your Honor, I would make the same motions, that is, to dismiss and for judgment of acquittal, on the fact that there is no proof that Mr. Leonard either signed or filed the returns, and I believe under the terms of the statute that both of those things have to be established in the Government's direct case.

I don't believe there is any proof at all that Jackson Leonard filed the returns or that he signed them.

I've already discussed with the Court that it could be a jury question that if you look at all the signatures they could conclude that he did in fact sign them. But with respect to the filing, your Honor, there is nothing in the record to show that Jackson Leonard filed income tax returns.

We have a return which is at one point in the hands of the certified public accounting firm and then it winds up in the hands of the Government. I think there is a missing link there which has to say Leonard had a hand in it, in the filing, and I don't believe the Government has submitted any evidence on that issue.

THE COURT: Let me be sure I understand you. This alone goes to the absence of proof of filing?

MR. TIGUE: Making, that's right, and filing.

THE COURT: Filing.

MR. TIGUE: Because anyone who makes and subscribes, it means filed, according to Judge Weinfeld.

THE COURT: And that goes to, this I will denominate, number 4, no proof of filing, which includes making and signing. Is that what you are saying?

MR. TIGUE: Yes, your Honor.

THE COURT: Go on.

MR. TIGUE: I would move to strike from evidence,

your Honor --

THE COURT: Mr. MacDonald, while we are at it, may I have the original returns so that I can look at the signatures, what they actually look like, 1 and 2?

MR. MAC DONALD: Yes, your Honor. (Handing).

MR. TIGUE: I had them all on my desk. Did you take them back?

MR. MAC DONALD: Yes. But I don't see 2.

MR. TIGUE: I have some more here.

(Pause.)

THE COURT: May I just observe that what apparently is the 1968 return, Exhibit 2, Mr. MacDonald, appears to be signed. It carries three signatures. Jackson D. Leonard, Sandra Sue Leonard and Leskowicz, Brower & Driver, and I would give my lay handwriting opinion that the same hand wrote all three of those.

As to which two of the three did not sign it, my guess is that all three were signed by the same person.

MR. MAC DONALD: My recollection, I haven't examined it recently, is that I think there is a recitation somewhere that Mr. Leonard as a consequence of the divorce decree had the power to sign for Susan. I think he signed for Sondra Susan from time to time.

THE COURT: I'm talking about '68.

MR. MAC DONALD: The "Leskowicz, Brower & Driver" seems to look familiar through other manifestations of it, and I'll look -- Mr. Tigue put in what I think must be a genuine one.

THE COURT: All right. Go ahead.

MR. TIGUE: My next motion, your Honor, is to strike the 1971 tax return for the same reasons as I would state for the 1969 affidavit and the testimony of Eva Brooke.

THE COURT: That is denied.

MR. TIGUE: The constructive dividend theory I've already spoken of. And, your Honor, I would also move to dismiss the indictment and for a judgment of acquittal for the denial of a speedy trial in this case. And by a speedy trial I mean the pre-indictment delay. There certainly is no claim here that there was any post-indictment delay.

And I know I have a heavy burden in that area, your Honor, but we constantly have these income tax cases which are filed literally on the even of the expiration of the statute of limitations. Because the first return of 1967 was filed in June of '68, and the indictment was filed here six years later, virtually to the day.

Now, in my foggy consciousness this morning, I

attempted to list some of the prejudice which has resulted from that delay, and I have a highly partial list, but I believe that the record is clear that during the interim, when the Internal Revenue Service began its investigation, from November of 1968 until June of 1974, there had been innumerable documents which have been destroyed, many of which I believe would have helped to establish the defenses in this case.

Just some of the ones I jotted down were some of the back up records for the Chase Manhattan bank checks, for instance that $383,000 which was put in evidence the other day. All we have left after all these years is one little slip which says that one check came from that Swiss bank, the name of which I can never correctly pronounce.

It seems to me that if the Government had acted in a more speedy manner, we would have had an opportunity to see whatever records were had by the bank, to perhaps establish that the money, or at least some of that money, did not come from the Swiss bank or that we could identify who it was or which bank we are discussing.

I think that, combined with what I regard as the prejudicial value versus the probative value of those documents, I have the worst of all worlds. I have an indictment which doesn't contain that charge, I have a

similar act for which I've had no time to prepare, and I'm now faced with the situation where the underlying documents have been destroyed, and that delay is not due to Mr. Leonard, it is due to the Internal Revenue Service.

I mean, Mr. Laski was on this case. He started in November of '68 and he was on it until June of '70. At that time it was assigned to Mr. Singer. I don't know how much of the subsequent portion is in the trial record, but I think that the depositions of the witnesses have already been submitted. The case was then transferred to Tragna, who had it for about a year and a half or so and then it was transferred to Mr. Reiner, who had it until it was referred to the Regional Counsel's Office.

It seems to me that the IRS was somewhat leisurely in pursuing this, particularly since they thought they had a hot lead, that there was a Swiss bank account, and also I believe in the pretrial documents there was some allegation that there were kickbacks, which turns out to be the Treadwell payments, which were perfectly legitimate.

But they had these two signals, which should have told them to get moving on the case, and in spite of all that almost all six years was used up.

Some of the other documents which were destroyed with the Laski status reports, for instance. I think that

the jury may perhaps attach a great deal of weight to the Laski affidavit and to his statements that were allegedly made back in March of 1969 because it relates directly, not the affidavit perhaps so much, but the testimony about the Union Carbide.

Now, he had no prepared monthly status reports, and in the interim unfortunately those documents, not by anybody else, but by the Government, have been mislaid. If those documents were still around, they would have been clearly 3500 material and I think I would have been in a better position to demonstrate to the jury that either the conversation never took place or it certainly didn't take place in the manner in which Mr. Laski indicated. I don't have his status report, so I don't know that for sure, but I do think that there was a right there which kind of fell by the wayside.

Also, another important set of documents --

THE COURT: What is it that you say, having to do with Union Carbide, you are disadvantaged in rebutting by the passage of time?

MR. TIGUE: I just mentioned Mr. Laski -- first of all, the Chase Manhattan records, I can't rebut the third of a million dollars. That is one. Number 2 is Laski's status reports, where he related on the stand that Mr.

Leonard said this, that and the other thing about Union Carbide.

If I had the status reports, I think I could establish that his testimony was inaccurate.

But to specifically answer you question with respect to Union Carbide, the Government is going to argue --

THE COURT: What kind of things? I am a little bit at a loss to see where the passage of time has knocked out anything you could have used. Are we talking about the delay in the payments that has been suggested here? Because it is that I think you are talking about, isn't it?

MR. TIGUE: The delay in payments.

THE COURT: There was a certain holdup of payments that has been suggested at some point here.

MR.TIGUE: Yes, yes.

THE COURT: Isn't that factually demonstrable by anything today?

Checks, microfilms, books and records? How does Laski's records figure in that?

MR.TIGUE: Because if Laski has a conversation with Leonard and he goes back to his office and writes a status report and says the only thing I talked to him about was the Swiss bank account," which -- well, never mind that. But if he puts in his status report what the substance

of the conversation is, I think that affects the allegedly false exculpatory statement.

The underlying facts can be demonstrated through the checks and so forth, but the truth or falsity of his testimony with respect to Leonard's false exculpatory statement, I can't do anything with that because the documents, which would be 3500 material, have been destroyed.

THE COURT: Is that going to be necessarily in a monthly statement, that kind of thing?

MR. TIGUE: I believe he testified that he was required to report the results of his conversations with the taxpayer in writing.

THE COURT: And you have such a report?

MR. TIGUE: I have one for 1970, your Honor, which was a year and a half after the tax. It was a monthly status report. He was not required during that month to relate --

THE COURT: I understand your position. Go ahead.

MR. TIGUE: And another important area of documents which have been destroyed are the Union Carbide invoices for 1970.

Mr. Leonard's company and his personal tax returns and the corporate returns were all audited and his

personal return for 1969 was audited and accepted and completed by the Internal Revenue Service, and at that point he no longer needed to have some of those records.

So, if he doesn't have them in his possession, the Government now comes in and says "Union Carbide, put on your microfiche and the copies that you do have of the invoice," and the Government is going to claim that one or more invoices were generated by the Leonard Process Company, which were in some way back dated or falsified or something of the sort.

Now, I think that demonstration of what the true set of facts are is that if we had the original invoices, it may have been that we could rebut that evidence, but since wilfulness is going to be the main issue here, I believe, I think it is an important issue, I think I have been denied, through the destruction of those records, the right to establish what the facts are.

THE COURT: All right, I see.

MR. TIGUE: Another motion I have to dismiss the indictment and for a judgment of acquittal on both counts of the indictment because during the course of Government's direct case, I have not received a single portion of the grand jury testimony, and I think the law in this circuit is clear and it has been stated a number of times, that if the Government puts only hearsay testimony in the grand jury, and there is not a good reason for it and it is not explained to the jury, the indictment must be dismissed.

I make that motion. It is usually a post-trial motion if there's a conviction, and I make it now because I believe pre-trial Mr. MacDonald has submitted none of the grand jury testimony, which I believe Agent Schulman put in an enormous amount of hearsay testimony because he didn't come on the scene until 1972, long after these events.

I think the only thing Mr. Schulman could have testified to, I gather from the nature of the motion I made and the response, that thre were some inaccuracies in what he told to the grand jury, either because of what was told to him or his recollection was faulty -- I have no idea -- but I would move on that ground even though I haven't seen

that grand jury testimony -- I haven't seen any grand jury testimony -- my first experience in that regard, I must say -- and simply renew my motion on what I would call the poisoned grand jury testimony of whoever did testify, which if it were inaccurate testimony it would be certainly sufficient grounds to dismiss the indictment.

I made this motion at the beginning of the trial and your Honor denied it.

THE COURT: It is again denied.

MR. MAC DONALD: If I may have a moment?

THE COURT: Yes, Mr. MacDonald.

MR. MAC DONALD: I have submitted most recently a copy of 3502, which is Tragna's material, and since Tragna hasn't appeared it hasn't been referred to although Mr. Tigue has a copy of that. There's a document stamp 00073. That constitutes the monthly report for Tragna of the prejudicial which is related to the similar reports which Laski offered.

I think it is important for anybody reading this material record, that there are two boxes, after you get beyond administrative points at the top, box number 1, "Findings to date with respect to FBA." (Attach statement if additional space required.)"

The second box says "other pertinent information."

(Attach statement if additional space required.)"

And thus the Government's position is that Laski, given the fair intentment of those instructions would have not necessarily concluded the other issues that didn't relate to the Foreign Bank Account Project in preparing his monthly summary, and so even though it's lost it's not fairly unfavorably that it contained any references to Catalytic Construction, $28,000, Union Carbide contracts and there alteration or these invoices, many subsequent items going on during the course of the audit.

THE COURT: Mr. Tigue indicated in his proffering of that motion, quite forthrightly, that he thought the law was basically against him. Does anybody want to argue that there's any controlling authority that leans either way here?

I have had no authority called to my attention whatsoever.

MR. MAC DONALD: I can't call your Honor's attention to a cite, but I think I have read that the IRS can extend the statute for years.

THE COURT: I seem to recall cases that hold that the statue of limitations by definition provides a period within which a prosecution can be brought without it being unduly delayed in legal complication.

Now, am I wrong in that?

MR. TIGUE: I think that if there is a delay in the pre-indictment and the defendant can show prejudice, I think then the Court certainly has from time to time dismissed indictments because of the prejudice. It is not an absolute rule. I hope perhaps at the end of the entire case I will be able to give your Honor a better legal position. I really am embarrassed that I don't have it now.

THE COURT: All right. That's number 5, as I have it, Mr. MacDonald.

MR. MAC DONALD: Yes. Your Honor raised the question concerning the Leskowicz, Brower and Driver signature on the tax return, number 2 and for the Court's aid I grabbed the exhibit with that opinion letter and it appears to look like the same person who signed Lescowicz.

THE COURT: Yes, it does.

MR. TIGUE: I am a little confused. I heard but I didn't understand.

THE COURT: The Leskowicz firm signature on the Defendant's Exhibit S bears a remarkable similarity to the signature on Government's Exhibit 2 of Leskowicz, Brower and Driver.

MR. TIGUE: Does that mean that Mr. Leskowicz signed the tax return?

THE COURT: All I am saying is that that's the comparison that I draw.

MR. TIGUE: I don't understand the purpose of the offer, why he showed it to your Honor.

MR. MAC DONALD: Your Honor was wondering what inferences the jury might reasonably draw in terms of similarities and I just pointed out that there was another exhibit available. I had no other intention than that.

MR. TIGUE: All right. Go ahead.

MR. MAC DONALD: With respect to the proper venue for the crime under 7206(1), the Government's position is that venue lies under that provision of the criminal code which addresses itself to the commission of crimes in more than one district and allows prosecution in any district in which the commission occurs, that this crime is prosecutable in any district where Mr. Leonard committed the crime.

Now, one of the intentions, indeed probably before this case is out, the primary element in the commission of the crime is will Leonard's mental intention and the Government suggests, that the place where he first formed the requisite mental intention and carried that intention out, when later coupled with those acts which led to the preparation, when later coupled with the acts which led to the signing, all those places are proper

places under the provisions of the criminal code which allows prosecution in more than one district.

Here Mr. Leonard formed, in the Government's view -- and the jury can so find -- the intention as early as '67 when he cashed the first of the ten Treadwell checks.

THE COURT: I understand your argument here, Mr. MacDonald, so I don't think you need to outline it for me.

Let me address the language of the count to you, which is the only one as to which Mr. Tigue raises that argument.

MR. TIGUE: Venue, your Honor?

THE COURT: Venue. And charge is that in the Southern District of New York he unlawfully, wilfully and knowingly did make and subscribe.

Now, the word "subscribe" means to me to write your name.

MR. MAC DONALD: Yes, sir, but the Government's position is that that doesn't limit -- the only district where one writes his name is not the sole and exclusive district and other acts in the way of making or subscribing were committed elsewhere -- we have a case on the point.

THE COURT: And may I look at 7206(1)? I have a copy of the section here, and let me know what the case is.

MR. MAC DONALD: Not squarely on the point. We have not been able to find a 7206(1) venue case.

THE COURT: Well, ingenious counsel has probably not raised that question before.

MR. MAC DONALD: Judge Weinfeld's opinion is available, and it has to do with signing on the last date before the statute expired, even if you exclude the date of filing in counting the six years, whether or not the subscribing on that day would bring it within the six year statute of limitations. Venue wasn't the issue.

MR. TIGUE: I think my Judge Weinfeld case is more in point, your Honor.

THE COURT: Well, obviously I will examine all of this.

So you are saying in essence that you have proved that he schemed this in major respect in the County of New York and therefore that satisfies the venue requirements under the authorities that you call to my attention.

MR. MAC DONALD: Yes, sir.

THE COURT: And you don't have to prove that he signed it either in New York or in New Jersey or in the Eastern District or anywhere else?

MR. MAC DONALD: That's our largest legal argument. We have a narrow factual argument which we think the

Court might hold as permissible under the testimony before the Court.

Mr. Nothofer, who prepared the draft, Government's Exhibit 80 for identification, testified in cross examination:

"Q Well, is there anything definite about this one other than in the ordinary course?

"A No, except that I don't remember the circumstances of whether it was delivered or mailed."

Page 464.

Therefore, I would ask the jury and the Court to consider the sequence of the dates on that tax return Government's Exhibit 2, being only aday apart, June 14th and 15th --

THE COURT: No, August 14th and 15th.

MR. MAC DONALD: The 14th being a Thursday and the 15th being a Friday.

THE COURT: I think if that's the factual argument, I would not find that adequate to sustain the position.

MR. MAC DONALD: Yes, sir. I would suggest that to have then put it in the mails so it was received the following Tuesday in Philadelphia, that we ought not to assume that it was mailed and not hand delivered and

assume that it was received the following day in Beach Haven, New Jersey, which I understand is eight miles out on the Atlantic Ocean, on an island, in time for Mr. Leonard to have signed it as indicated on the tax return. But I won't press the point.

That is essentially our position. The Pitoney case is a case where Judge Medina said it was prosecutable where the return was filed in Buffalo, even though the jurat indicated it was made in Massahusetts several days before the filing date and he explicitly said under the continuing observance provision of the criminal code that they didn't have to reach the question of whether the case could also have been brought in Massachusetts.

I cited a Fourth Circuit case where both jurisdictions would control.

THE COURT: And I have the photocopies of those?

MR. MAC DONALD: Yes, your Honor.

In respect to the argument about constructive dividends and return of capital, we have a case -- we have several cases. The Davis case, which Mr. Tique cites at the beginning of his memo, is the one that runs against him the strongest.

I think I can tell the Court that the Second Circuit Law, which is cited there is somebody versus the

Commissioner, and they are fighting over the amount, and there is no -- I think I am right -- there is no Court opinion anywhere that the burden is upon the Government to exclude return of capital as a source of income or what are essentiall embezzled funds in the small corporation circumstances.

We would hand up to the Courts the additional decisions, Bernstein, Hartman -- in addition to the Davis cases -- which we say support in the Eighth and Fifth Circuits the Government's position that no such burden rests on the Government although there is a privilege on the defendant to claim that if he would want, in the way of a defense.

We would also factually point out, your Honor, in respect to that argument, that at least $21,642 of the fund which have been traced into Mr. Leonard's pocket in 1968 were before the Union Carbide Corporation assented to the assignment of the contract that gave them an absolute bar to withhold that consent. So in substantial proportion, aside from the Second Circuit Civil Law, we suggest that the facts allow the inference that the counts have been proven to that extent and at most the defendant would be entitled to a charge that the jury needn't prove it to the penny, but a substantial amount would suffice.

I think there is an open item.

I guess Mr. Tigue also argued that the three verbs in the indictment, "Made, subscribed and later filed", required under both counts 1 and 2, somebody to have seen Mr. Leonard put it in the mail box or if it was hand delivered, to watch him file it physically.

THE COURT: I wouldn't think that that would be required.

MR. MAC DONALD: The Government would never meet its burden in that case.

THE COURT: You would have to have Internal Revenue agents standing at every mail box, if that were the law.

MR. MAC DONALD: We have nothing further, your Honor, unless you have some questions.

THE COURT: All right. I will reserve decision on the open items, and let's get the jury in and go forward.

MR. TIGUE: Your Honor, may I have just one minute.

I made an application yesterday about the so-called yellow sheet, and I have not had any response.

MR. MAC DONALD: I have no yellow sheet and I have never had one.

MR. TIGUE: Your Honor, may I have just three minutes to go get my witness?

THE COURT: By all means.

(Pause.)

(Jury in the box)

THE COURT: Ladies and gentlemen, the Government has rested its case in chief.

Mr. Tigue.

MR. TIGUE: Jackson Leonard calls Mrs. Terry Daniti

T E R E S A D A N I T I, called as a witness on behalf of the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. TIGUE:

Q Mrs. Daniti, will you tell us what your occupation is?

A I am secretary to the Leonard Process Company.

Q And do you know Mr. Leonard here in court today?

A Yes, I do.

Q Are you the custodian of the corporate records of the Leonard Process Company?

A Yes, I a.

Q If I may, let me show you Defendant's Exhibit AA, AB, AC and AD.

Could you identify those records one at a time, please, starting with AA and going across the table?

A AA is an expense report of Mr. Leonard's trip to Australia.

Q All right. That's a good description.

A Okay.

AB is a monthly expense report for March 1969.

AC is Mr. Leonard's trip to Louisiana and Dallas, and AD is his monthly expense report for July of 1967.

Q Now, are these four exhibits kept in the ordinary course of the business of the Leonard Process Co. Inc.?

A Ues.

Q And is it the ordinary course of their business to keep and maintain these records?

A Yes.

MR. TIGUE: I offer in evidence AA, AB, AC and AD, your Honor.

MR. MAC DONALD: As to AC and AD, the 1967 reports we have no objection. As to the others, that relate to '69, we object on the grounds of relevance.

THE COURT: Come up, gentlemen.

THE COURT: AC and AD are consented to and shall be received in evidence.

(Defendant's Exhibits AC and AD received in evidence.)

(At the side bar.)

THE COURT: Mr. Tigue, what is the purpose of this?

MR.TIGUE: If your Honor please, this will show at the time Mr. Laski claims he had a conversation with Mr. Leonard on the 17th and 18th of March, Mr. Leonard was in Sidney Australia.

THE COURT: All right. Then AA will be admitted.

MR. TIGUE: AB shows the entire month.

THE COURT: You are offering it only for that showing that in a document covering a longer time period the facts of AA are inked into it to give it further authenticity as you see it?

MR. TIGUE: Yes, your Honor.

THE COURT: All right. They will both be received.

(In open court.)

MR. MAC DONALD: We withdraw our objection.

(Defendant's Exhibits AA and AB received in evidence.)

Q Miss Daniti, will you take a look at Defendant's Exhibit AI.

Miss Daniti, if I asked you the same questions about whether it was kept in the regular course of business and would your answers be the same?

A Yes, they would.

Q Is that an expense voucher for the period, 1971?

A Yes, it is.

MR. TIGUE: I offer in evidence, your Honor, Defendant's Exhibit AI.

Q While Mr. MacDonald is looking at that, would you take a look at Defendant's Exhibit AJ, please.

MR. MAC DONALD: We have no objection.

THE COURT: Very good.

(Defendant's Exhibit AI received in evidence.)

Q Miss Daniti, if you look at Defendant's Exhibit AI in evidence, there has been some testimony about a meeting in, tjere has been some testimony about a meeting in New York in February 1971. Does that exhibit relate to that period?

A Yes, it does.

Q And can you tell where -- does it indicate where Mr. Leonard was in February, on February 22, 19--

THE COURT: I will sustain an objection to that.

MR. MAC DONALD: The document is in evidence.

THE COURT: The document is in evidence and it speaks for itself.

MR. TIGUE: May I read a portion of it, your Honor.

THE COURT: You may.

(Mr. Tigue read to the jury from Defendant's Exhibit AI.)

T9 (Mr. Tigue read to the jury from Defendant's Exhibit AA in evidence.)

(Mr. Tigue read to the jury from Defendant's Exhibit AB in evidence.)

Q Miss Daniti, do you have before you Defendant's Exhibit AJ?

A Yes.

Q Can you identify that for us?

A It is the corporate records, with minutes in it and stock certificates.

MR. TIGUE: I offer in evidence, your Honor, this exhibit.

Q Is that of the Leonard Process Co., Inc.?

A Yes.

MR. TIGUE: I offer in evidence, your Honor, Defendant's Exhibit AJ.

THE COURT: Is this the corporate set, as we call it?

MR. TIGUE: Yes, your Honor.

MR. MacDONALD: No objection.

(Defendant's Exhibit AJ for identification was received in evidence.)

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MR. TIGUE: I am reading, ladies and gentlemen, from Defendant's Exhibit AJ, the stock transfer ledger.

(Mr. Tigue read to the jury from Defendant's

Exhibit AJ in evidence.)

MR. TIGUE: I have no further questions of Miss Daniti, your Honor.

MR. MacDONALD: May I have just one second, your Honor?

THE COURT: Surely.

(Pause)

MR. MacDONALD: We have no questions.

THE COURT: You may step down.

(Witness excused)

MR. TIGUE: Your Honor, I would offer in evidence Defendant's Exhibit AK, which has been marked for identification.

MR. MacDONALD: No objection.

THE COURT: Received.

(Defendant's Exhibit AK for identification was received in evidence.)

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MR. TIGUE: May I just read briefly from this, your Honor?

THE COURT: May I see it?

MR. TIGUE: Yes, your Honor (handing).

(Pause)

THE COURT: Yes. Go ahead.

(Mr. Tigue read to the jury from Defendant's

Exhibit AK in evidence.)

MR. TIGUE: Your Honor, the defendant calls Mr. Wagner.

J O S E P H E. W A G N E R, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TIGUE:

Q Mr. Wagner, would you tell us what your occupation is, sir?

A I am a credit supervisor for the European-American Bank, which is the bank which has immediately taken over some of the assets of the defunct Franklin National Bank.

Q And were you served with a subpoena for any accounts that Franklin National Bank had back in the year 1966?

A Yes.

Q Have you looked to see if there was any account in 1966?

A Yes. We searched our records for such a record, yes.

Q And was there an account in 1966?

THE COURT: For whom?

A There would be no -- we found no evidence that

there was an account.

THE COURT: For whom?

MR. TIGUE: I am about to say, your Honor.

Q For the Leonard Process Company or Jackson D. Leonard?

A No, there is no evidence to suggest that there was an account at that time.

Q May I show you Government's Exhibit 5 for identification, a Union Carbide check, and it has on the back a stamp which reads "Franklin National Bank" and some other information.

Is it possible to tell today, Mr. Wagner, into which account that check was deposited or whether it was cashed?

A Well, on the basis of my expertise I wouldn't be able to tell you that. It would suggest that this was deposited into an account.

MR. TIGUE: I have no further questions of Mr. Wagner.

CROSS-EXAMINATION

BY MR. MacDONALD:

Q Did you bring the subpoena with you that you referred to in your testimony?

A Yes.

Q May I see it, please?

A Yes, surely (handing).

(Pause)

Q Does the back of that check have a circle "L/D" stamped on it?

A Yes.

Q Does that mean the Loan and Discount teller, ordinarily, in the Franklin National Bank?

A That I wouldn't be -- I'm not that conversant with the operational, you know, processes, and I wouldn't be able to tell you that. But I should imagine that would be correct.

Q I'm sorry? I missed the last phrase.

A I said: But I would assume the Loan Discount -- but I couldn't certify that as a statement of fact.

Q Were you aware that the government had subpoenaed the Franklin National Bank some time ago for any records in regard to that instrument?

A No.

Q Did your search include liability ledger cards to see if that instrument was given to Franklin National Bank by Mackson Leonard to pay down someone's loan?

A Well, that I couldn't answer because I just became involved in this with regard to the authenticity of

jgh6 Wagner-cross

this credit file and the information contained in it. So, insofar as this instrument goes, I have no prior knowledge of a prior investigation or even of whether such a check existed.

MR. MacDONALD: May we mark the credit file the witness has referred to as an exhibit and might I examine it, your Honor?

THE WITNESS: Yes, indeed.

MR. MacDONALD: I suppose we can also mark as the next government exhibit the subpoena with which the witness complied in this case.

b2

THE COURT: For identification.

MR. MacDONALD: Yes.

(Government Exhibit 100 was marked for identification.)

xx

(Government Exhibit 101 was marked for identification.)

xx

MR. MacDONALD: May we defer cross-examination of this witness and ask him to return with further documents? I will be goad to explain to your Honor the specification of documents.

THE COURT: Maybe you had better come up to the side bar.

(At the side bar.)

MR. MacDONALD: I couldn't put my hands on the subpoena at the moment, but they are somewhere in my papers that we served on Franklin National Bank some time ago, specifying that specific check and the documents which relate to it.

I think I've spoken to John McKay of the Legal Department on no less than 25 occasions, asking him to make further searches.

The branch at which Mr. Leonard did business was closed down, and the records have been put into dead storage and they are in woeful shape.

It is our belief that we will be able to establish, if we can get a direction for this witness to bring back the liability ledger card of one Ira Sands for a loan assigned to Mr. Leonard and two other men in January or February of 1966, that he will find such a liability ledger after he searches the dead files and it will show a $10,000 payment that August being credited against that card.

And we would just like the aid of the Court in obtaining thatrecord. I've specified it as recently as five or six days ago, and Mr. McKay has not advised me of the most recent results of the search in that respect.

MR. TIGUE: It seems to me that additional records which are not related to the direct testimony should not be--his cross-examination should not be held up on that account, I don't believe.

But for that particular item I have requested the back up, too, and I have been unable to get it, because I'm equally confident that it is helpful to me as well as the government thinks it is helpful to them.

But I have no objection to his coming back.

THE COURT: All right. We'll do that, because it

seems to me that you testify with regard to this check, and anything that touches upon that check is appropriate cross-examination and, as you say, you want further things touching upon that check.

MR. TIGUE: If there are any.

THE COURT: In aid of your own case.

So, on that ground, we will do that. We will defer this man.

Do you want to prepare a statement jointly for him -- it can be a telephone to him -- as to exactly --

MR. TIGUE: We can do this when the jury is dismissed today, your Honor.

THE COURT: Yes, at 1 o'clock. All right.

MR. TIGUE: While we are up here --

THE COURT: In other words, we are going to terminate with him at this point.

MR. MacDONALD: And ask him to make a further search for documents and return.

MR. TIGUE: Your Honor, my next witness is going to take about, I would estimate, 15 minutes to set up equipment. I am wondering if I should proceed now and start with his direct testimony. I would estimate he will be about two hours.

My own preference is to do it all from beginning

jgh10

to end, because it is in the nature of a demonstration and I would not like to have it broken up.

THE COURT: Have you nothing else you can go on with?

MR. TIGUE: Not at the moment, your Honor. This is exactly the order. I am prepared to do it if I have to, but I think it is not the orderly way to proceed. I know we will be losing a half hour by doing it, but I would request --

MR. MacDONALD: We planned to sit for another hour and a half, I thought, until 1:30.

THE COURT: No. Until 1 o'clock. I have motions and two hearings at 2 o'clock.

MR. MacDONALD: We would just ask to press ahead. I think the jury wanted to get --

THE COURT: Yes. I think we will go ahead, Mr. Tigue, and you can make your connection.

MR. TIGUE: May I have a recess so that they can come in here and set up their equipment?

THE COURT: Yes.

(In open court.)

THE COURT: Mr. Wagner, we are going to excuse you until Monday morning.

At what hour, gentlemen?

MR. TIGUE: 10, your Honor? You mean for his return?

THE COURT: For this return.

11 o'clock?

MR. TIGUE: Fine.

THE COURT: All right. 11 o'clock. In the meantime, counsel will be in touch with you with regard to certain areas of a documentary search and inquiry that is going to be asked of you. So that you are to treat their requests of you as being a direction of the Court to do that searching and return at 11 on Monday morning.

THE WITNESS: Fine.

THE COURT: You are excused for now. Thank you very much.

(Witness temporarily excused.)

THE COURT: Ladies and gentlemen of the jury, we will take a recess for about ten minutes. Then, as I told you before, we will sit until 1 o'clock today.

(Recess)

mpb 1 Tytell-direct

T10 (Jury in box.)

MR. TIGUE: May I proceed, your Honor?

THE COURT: You may.

MR. TIGUE: Jackson Leonard calls Miss Pearl Tytell.

P E A R L L. T Y T E L L, called as a witness by the defendant, being first duly sworn, testified as follows:

MR. TIGUE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. TIGUE:

Q Miss Tytell, would you tell the jury and his Honor what your occupation is?

A I am a questioned document examiner. That deals with the identification of handwriting, typewriting, paper, inks. It also calls with the identification of typewriting, interlineations, corrections, alterations and all that goes into the field of identifying documents that may be in dispute.

Q Miss Tytell, you have testified before in court, have you not?

A Yes, sir.

Q And would you state your qualifications for us, as required for your testimony?

A Yes. My office and laboratory are located in

lower Manhattan at 116 Fulton Street. My formal education consists of a Bachelor of Science and Master of Arts degrees from New York University.

I have studied the field of questioned document examination for over 25 years and have been in the active practice of the examination of documents as it pertains to handwriting and typewriting identification and detection of forgery.

I have conducted individual research projects in the field of questioned document examination and have been licensed by the University of the State of New York to teach the subject of questioned document examination as it applies to identification of handwriting and detection of forgery and have taught the course Problems and Techniques of Questioned Documents at New York University School of Graduate Education, where it was given as a three-credit course.

I also taught that subject in the course entitled Police Science 14 at Brooklyn College in Brooklyn, New York, and have participated in a seminar, a week long seminar, at the University of Louisville, at Louisville, Kentucky, where I lectured and taught the subject of questioned document examination, and among the students in that seminar-- it was not open to the public -- the requirements were that

the individuals be in the field of law enforcement or social science.

I have also lectured on the subject to the Federal Probation and Parole offices in this district and the entire New York area, as well as New Jersey, and have lectured before military censorship bureaus with relation to questioned document examination and detection of forgery and identification of handwriting and typewriting.

Q Mrs. Tytell, have you -- I'm sorry.

A Well, if you want me to go on, I will.

Q Well, we are a little limited in time, because we are going to stop at 1 o'clock.

THE COURT: Mr. Tigue says this is a rather lengthy matter, and if the jury would not mind sitting for a few minutes past, we will see how far we can go.

Will that be agreeable to all?

All right.

Q One last question on qualifications:

Have you consulted from time to time with the United States Attorney's office with the Southern District of New York?

A Yes. They have consulted with me.

Q I am sorry.

Mrs. Tytell, did you at my request examine

the following documents: Government Exhibits 65, Defendant's Exhibits V, W, U and Z?

A Parts of these exhibits.

Q Yes. Particularly, did you examine them for the handwriting and the signatures that appear on these documents?

A Some of the signatures as they appear on the documents.

Q For instance, Government Exhibit 65, the second page has some signatures of Jackson Leonard in the lower left-hand corner. Is that what you examined?

A Yes.

Q On Defendant's Exhibit V, it says "File, Jackson D. Leonard", and some other handwriting. Did you examine that as well?

A Yes, sir.

Q With respect to W, did you examine that handwriting on that page at the top?

A Yes, sir.

Q With respect to Defendant's Exhibit U, have you examined both pages for the handwriting and the numbers?

A Yes, sir.

Q And the same question with respect to Z?

A Yes.

Q The handwriting at the top?

A That's correct. And there is also, I recall, Exhibit 3.

Q Yes. I have Government's Exhibit 3 here.

And did you examine page 44, which contains the signature of Jackson Leonard?

A Yes, sir.

Q Now, did you also, in the course of your examination, examine Government Exhibits 1 and 2, which I believe the court has?

A Yes.

Q Now, when I refer to Government's Exhibits 1 and 2, let us start with Exhibit 2, which you have in your hand. I refer specifically to the lower right-hand portion of the tax return, where the signatures appear at the bottom.

A The lower left-hand corner.

Q Yes.

A Where the signatures appear. Yes, sir.

Q And also attached, there are green sheets which bear the signature "Jack D. Leonard".

Did you examine those as well?

A There are pairs of signatures on those sheets, and I did examine those.

Q And did you also examine Government's Exhibit 1

with respect to the lower left-hand side, where the signature appears?

A Yes. And also those green sheets, three of which are attached to Exhibit 1.

Q Now, did you examine those documents to determine who the writer was of Government's Exhibit 2, in the lower left-hand corner, with respect to signatures?

A The purpose of the examination of the various signatures and handwritings referred to on the exhibits 3, U, V, W and Z and also the green sheets, a total of five -- three I believe are attached to Exhibit 2 -- or rather, one attached to Exhibit 1 and two to Exhibit 2, were examined and compared, in order to arrive at a determination if possible as to whether or not the signatures which appear on Exhibit 2, the lower left-hand side, namely, "Jackson D. Leonard" and "Sandra Sue Leonard" were written by the individuals whose names appear.

Q Miss Tytell, based on your examination and your comparison, did you arrive at a conclusion as to whether or not Jackson Leonard signed where it is indicated at the lower left-hand side of Government Exhibit 2?

A I did arrive at a conclusion.

Q Can you tell us what that is, please?

A That Jackson D. Leonard the individual who signed

the various documents referred to, attached to Exhibits 1 and 2, was not the individual who signed "Jackson D. Leonard" on the lower left-hand side of Exhibit 2.

b2 Q Now, Government's Exhibit 2 on the lower left-hand side has two signatures, "Jackson D. Leonard" and "Sondra Sue Leonard". Did you arrive at the conclusion of whether those signatures were written by two individuals or by one person?

A Both of those signatures were written by one individual, one and the same.

Q In examining those documents that we have mentioned so far, were you able to determine who in fact signed Government's Exhibit 2?

A No. Before -- I did make such a determination, sir, but before that I also determined whether or not Sondra Sue Leonard wrote that name "Sondra Sue Leonard", and I arrived at the conclusion that she did not.

Q Your opinion is that neither Sondra Sue nor Jackson D. Leonard signed those signatures in the bottom left-hand corner of Government Exhibit 2?

A That is correct.

Q Now, I believe you said that you arrived at a conclusion with respect to who in fact did sign those signatures.

A Yes, sir; I did.

Q And will you tell the ladies and gentlemen of the jury and his Honor what your opinion was?

A The individual who signed both the names "Jackson D. Leonard" and "Sondra Sue Leonard" is the individual who wrote the various entries on Exhibits W, V, Z and U.

Q And that is the handwriting of Edward Leskowicz, which has been identified by other witnesses.

Now, during the course of your examining these documents, did you prepare slides?

A Yes; I did.

Q And do you have the slides before you?

A Yes. I have them here.

Q And are you prepared to demonstrate them to his Honor and the jury?

A Yes. The papers for having photographed these various signatures and writings was in order to illustrate the basis for the conclusion that Jackson D. Leonard, the individual who signed various documents attached to Exhibits 1, 2 and 3, is not the individual who signed "Jackson D. Leonard" or "Sondra Sue Leonard" on Exhibit 2, that is, the face of Exhibit 2, and also I have examined some samples of Sondra Sue Leonard's signatures which are attached to Exhibits 1 and 2, and that individual is not the person who

signed either "Jackson D. Leonard" or "Sondra Sue Leonard" on the first page, in the signature section of Exhibit 2, and then to demonstrate the person whom I have identified as having written both of those names.

Q Would you like to proceed with the demonstration?

A Yes.

THE WITNESS: If I may, your Honor--

THE COURT: Please do.

Q Would it assist you if the lights were turned out?

A Yes, please.

MR. TIGUE: With his Honor's permission.

THE COURT: You may, absolutely.

THE WITNESS: Your Honor, would it be permissible if I could go to the screen?

THE COURT: You may do anything that makes your testimony most effective in this regard.

THE WITNESS: I think I may be able to point out some of the details for the purpose of identification.

Excuse me. I want to get my pad, so I can identify particular slides as having come from particular exhibits.

Q Miss Tytell, do I notice today your voice is not what it usually is?

A I have laryngitis, and I hope that I don't create too much difficulty.

The slide on the left-hand screen at the moment is one that is written by the individual who in my opinion signed both the names "Sandra Sue Leonard" and "Jackson D. Leonard" on the left-hand side of the top page of Exhibit 2.

I wish to show you some additional handwriting of the same individual so as to acquaint you with some of the identifying features of that handwriting and some of the consistencies within that handwriting, so when other writing or writing not identified is shown it can be readily identified as having been written by the person who wrote these entries.

On the right-hand screen --

Q Excuse me, Mrs. Tytell. This is the handwriting identified as that of Mr. Leskowicz?

A Well, it is the handwriting that I have identified as the handwriting of the individual who signed those two signatures.

On the right-hand side is a slide of Exhibit W. The one on the left is from Exhibit V, and both of these handwritings are by the same person, and I want to show you some of the variations that occur in that writing but nevertheless can be identified as having been written by the same person.

Note that the J's do have some variations. Sometimes there is a loop at the top, and the one that I refer to on the left has no closed loop. When I say "the left," I am referring to that writing from Exhibit V.

Nevertheless, it can be observed that the formation, the proportions of the letter are the same for the purpose of identification.

Another version is the capital L, as you see it in the name "Leonard". The one in Exhibit V has a curve, and on Exhibit W it is straighter. Nevertheless, when you take the two names "Jackson Leonard", from Exhibit V and compare it to the two names "Jackson Leonard" in Exhibit W, you can observe very marked similarities, identifying characteristics, in the other letters going with the name "Jackson" as well as in "Leonard", and particularly in the lower case letters of"Leonard", note the "o" formation, open at the top, and also a noteworthy comment would be that this is a very skillful writing; it is written quickly and particularly skillfully.

The terminal "d" is a characteristic that I would like to have you focus your attention on, because it is written with a very wide loop at the top and rather squat in appearance.

To a lesser extent, that formation appears on

Exhibit V, but when taking the entire name in its totality, there could be no doubt that both were written by the same person.

The "JDL" initials which appear before the name in Exhibit V also bear the similarities referred to in the Jackson Leonard signatures, taking, namely, the J, and the one that I refer to in the initial section of Exhibit V is really a composite of the other two, and it should be kept in mind that an individual writing in his nature -- in a natural manner will of course have a degree of variation in his handwriting, because individuals do not write as a printing press would but rather incorporate some variation in their writing, but the variation nevertheless will not cause one to eliminate the writing from consideration. It will still be identifiable, because of consistencies in the style of the writing in the proportions, in the formations, in the alignment and particularly in the skill of the writing.

The L in the initial section of Exhibit V is much closer to the L above in that same exhibit in not only its proportion, but you see the curved section on the left (indicating).

I would like to call your attention to the S's in the word "Statement", on Exhibit W.

May we continue with the next slide, please?

We have Exhibit -- portions, that is, of Exhibit U on the right-hand screen, and again I would like to compare that with V, and although there are some variations, which are expected in natural handwriting and in the writing of any individual, it certainly can be identified as having been written by the same individual, and in addition to the "Jackson Leonard", which I have discussed with you as well as the D formation, the initial, which you may compare with the one on Exhibit V, note the numerals. You see the formation of the 7 with the curved staff, and you can observe the 7's in the date on Exhibit V, and you see the strong similarity of that formation.

Again, in this Exhibit W, you have the S formations which I pointed out in Exhibit W, and you will recall they were similar in formation to these.

May we go to the next slide, please.

There is another page of Exhibit U, and here again you see the S formation, similar to those on the previous pages, and again we have a J.D. Leonard, which affords an additional comparison of "J.D. Leonard" as it appears in Exhibit V, the initials JDL in Exhibit V, and as we had seen them on the previous page on the right-hand creen on Exhibit W, and also the other page.

Now may we go to the next?

Here are numerals from Exhibit U, the page that you have just viewed on the right-hand screen. That exhibit has columns of numbers, and you can observe, and I wish to call your attention to the way that these numerals were written.

Note the 5 in the cents digit columns of 8505.25. You see how the bottom portion has been omitted. It is written very rapidly, and therefore the entire formation has not been formed, but nevertheless in its total context, this can be read as 25.

I would like to call your attention to the formation of the 8's as they appear in numerous lines of this Exhibit U, and note the formation, and I am going to go with the pointer and track what I believe the path of the pen took in forming that 8, going down and then up to the top and forming the curve and then ending.

Now, some variations among those 8's appear, but they do appear in comparison to the other numbers of that same line. They appear often to be a little bit larger.

Note the proportion of those 8's when you compare them to the rest of the numbers. It's an interesting feature that that individual has in writing those 8's.

May we go to the next one?

This is another section of Exhibit U, and here again it just emphasizes the manner in which the numbers are written, and you can see the feature to which I refer with regard to the 8's and also the staff of the 7 being curved, and also in writing the 9, the 9's are usually curved, that is, the down stock of the 9's are usually curved, similar to those of the 7's.

May we go to the next?

This is from Exhibit Z, I believe. There are some numbers on it, and here again the consistency of the formations that I have discussed with you on the 7's, the 8's, here you see the 9's similar to the 7's, the size of the 8's similar to those of the previous slide on Exhibit U. This is from Exhibit Z, I believe.

An interesting feature that I would like to comment on is that there is some overwriting here. Do you notice the initial which is overwritten, and this 6 is not overwritten, but it is enhanced. There is an additional circle put in there to make it -- what the writer appeared to do to make it more legible.

May we go to the next?

This is the top section of the document from which the previous slide was taken. You see the lower portion of this had some numbers on it, and it is a ruled form, but

here we see the name "Jackson" and, of course, the J, which I want to call to your attention, and on the line below you have the name "Louis", and therefore we have the opportunity to again view the way the capital L is formed.

Because of the size of this page and the enlargement, I have this in two sections.

May we see the other section, the other side of this page?

Here you see the "Jackson" repeated. It was on the right-hand side of the previous slide, but this is the total name, and you see there is this slight alteration here. But I wish to call your attention to the L formation, the B, the manner in which the lower case letters are written, and of course, the proportion of the J, the very bold, wide J and the big loops, and again the L which I showed you, repeated in this slide.

T11

Now, in each instance you will note that although there is some slight variation in the writings going from Exhibit V to the one shown on the right-hand screen, there could be no doubt in my opinion that they are written by one and the same individual.

And I wish to focus your attention now on the slide which is of the signatures, Exhibit 2, which I told you in my opinion was written by the individual who wrote these various handwritings on Exhibits V, U, W and Z.

And may we have that, please.

Q Excuse me. This Government's Exhibit 2 on the left-hand side is the 1968 income tax return for Jackson Leonard, the lower left-hand side?

A Yes, sir, and bears the date 8-15-69.

As you can see, there are two signatures on the slide of Exhibit 2, and it is inescapable, in my opinion, that both of these signatures were written by one and the same person and that that person is the individual who wrote the various handwritings I've just illustrated, for the reasons I have outlined.

Note the formations of the J in Jackson, as well as the rest of the name, and may we have -- well, while we have this on the right-hand screen, this Exhibit Z, note the L formation of Exhibit Z and compare it with the L

formations of both names "Leonard" on Exhibit 2. Both certainly agree with each other and agree with Exhibit Z.

May we go back to -- well, we had that on the previous slide. So let us skip to the other.

While we have the numbers on the screen, may I point out the 8-15-69, which was also written by the individual who wrote the two signatures, and therefore those numbers may be compared with the numbers on Exhibit Z and Exhibit U.

You recall that I talked about the curve in the 9 as they are often written. You see the 9's in the "8-15-69" dates alongside of the signatures of Exhibit 2, and the 5's. It was on Exhibit U, which we will get to in the next slide, that I pointed out a 5 that had not been completed, typical of the 5's that you see in "8-15-69" on Exhibit 2 alongside of the "Leonard" signatures.

The 8's, which were identified on the various numbers in the standards, you can see are like the 8's in the date.

And you have some on this slide as well, which I am pointing to on the right-hand side.

May we go to the previous?

Now, here you have other 8's and 5's and the curved 9's, all of which correspond with these dates on

Exhibit 2.

May we go to the next one on the right?

And I now again call your attention to the 5 that I referred to which was incomplete, and apparently a manner in which this individual does make 5's on occasions, as the 5's in the date 8-15-69 and the curve which is present both in 7's and 9's. Of the numbers correspond - the 8's, the 5, the 9, and the 6's agree as well.

May we go to the other?

Now, here we have the opportunity to compare the S's of "Sondra Sue" with some S's from the writer of Exhibit U, and I call your attention to the word "Statement," and again you may observe the J and the D and the name "Leonard" on Exhibit U in comparison to the writings on the signatures with Exhibit 2, the signatures on that.

May we go to the next?

And this has been backed up so that you can now observe the S's. It is just a repetition of more of the same S's and how it compares with the signatures on Exhibit 2, and again the opportunity to compare the 8 with the 8's of the date 8-15-69 on Exhibit 2, as well as the S in "Six" with the S's of "Sondra Sue."

And here again we see the two words "Statement" on the right-hand side screen to compare with the S's in

"Sondra Sue," and again the "Jackson Leonard" as it appears.

And now that we have the signatures of Exhibit 2 on this screen, I thought that it would be interesting to again compare this slide, which we had viewed previously, while the Exhibit 2 was not in view. But when we were comparing just the handwritings of the individual who wrote all of the Exhibits U, V, W and Z, and you can now compare it with the "Jackson D. Leonard" and the "Sondra Sue Leonard" writings, names on Exhibit 2, you see that they agree.

Notice the L formation on the two names "Leonard" of Exhibit 2 and compare it with the "Leonard" on the right-hand side, which is a known writing, a writing by an individual who has been identified, and use that as a standard of comparison. In that way you are able to identify
b2 the writer of these two signatures.

THE COURT: Miss Tytell, would you and Mr. Tigue and Mr. MacDonald come here for just a minute?

(Discussion off the record at the side bar.)

THE COURT: Ladies and gentlemen, we are going to go on for a few more minutes until we reach a convenient stopping point in the presentation.

A (Continuing) I would like to show you some signatures that were attached to the Exhibits 1 and 2 of

Sondra Sue Leonard's signature and show you the sharp contrasts between her signatures and that which appears on Exhibit 2, the one on the left.

Here is a signature of Sondra Sue Leonard on the right screen, which is either from Exhibit 1 or 2. There are a total of three signatures, and I'm not sure at this moment whether this is attached to Exhibit 1 or Exhibit 2, but the three are attached to either of the two exhibits. And you are now looking at one of those, and if you compare it with the Sondra Sue Leonard signatures on Exhibit 2 I believe that it will become apparent that the individual who wrote "Sondra Sue Leonard" on that form attached to either Exhibit 1 or 2 is not the person who signed "Sondra Sue Leonard" on Exhibit 2.

May we go to the next Sondra Sue Leonard signature?

And again you see a second Sondra Sue Leonard signature, which bears a date at the top of May 28, 1968, and I think you will observe that that signature does compare and may be identified as the person who wrote the previous signature but not the one that wrote "Sondra Sue Leonard" on Exhibit 2.

May we go to the third?

And here again is a Sondra Sue Leonard signature which does not correspond to the Sondra Sue Leonard signatures

on Exhibit 2. Her handwriting is vastly different.

May we then go to the signatures attached to Exhibit 1 and Exhibit 2, the tax returns of Jackson D. Leonard, and show you the sharp differences there.

This is a pair of signatures, both written by Jackson D. Leonard, as can be observed from the initials on the right-hand side indicating JDL having written "Sondra Sue Leonard." And so this affords the opportunity of comparing writings of Jackson D. Leonard in two instances, giving an opportunity for a little more variation in the style and the skill of that individual's writing, and it can be observed that the person who wrote both of these names is not the one, he is someone other than the individual who wrote the two signatures dated 8-15-69 on Exhibit 2.

May we go to the next Jackson D. Leonard signature?

Here again you have a similar form attached to Exhibit 1 or Exhibit 2, with two names written by Jackson D. Leonard bearing initials on the lower signature, indicating that that individual wrote both names, and compare that with both Jackson D. Leonard and Sondra Sue Leonard signatures on Exhibit 2, and the sharp contrast, in my opinion, is self-evident.

Just to point out that the individual who wrote the Jackson D. Leonard and Sondra Sue Leonard signatures on

the right-hand side on the forms from Exhibits 1 or 2, note the "r" formation just as one minor difference in contrast to the "r" formation used in the "Sondra" on the left-hand screen, which is Exhibit 2.

The handwriting is just totally different. This individual does not possess the writing skill that the individual who wrote the signatures on Exhibit 2 possesses. One cannot write more skillfully than the best skill that one possesses.

May we have the next one? Here again you should also observe that all of these pairs of signatures written by Jackson D. Leonard agree with the previous pairs, and you see the consistency among the writings of Jackson D. Leonard, that they can be identified among themselves as having come from the same individual.

But then, of course, when compared with the writings on Exhibit 2, the two signatures, they are in sharp contrast.

This is just one other pair of signatures written by Jackson D. Leonard for the purpose of illustrating the sharp differences between that handwriting and the handwriting which appears in the two signatures dated 8-15-69 on Exhibit 2.

I believe this is the last pair. There were five sets of signatures, and they are all illustrated to you for

the purpose of showing the manner in which that individual signs his name and the way that he writes names other than his own, such as "Sondra Susan" or "Sondra Sue," and compare it with the two signatures which are on Exhibit 2.

The Jackson D. Leonard signature on view here is from Exhibit 3, and that corresponds with the signatures that came from -- those forms which came from Exhibits 1 and 2, but it is different from the two signatures on Exhibit 2.

And then the last one that we have for that illustration is a pair of signatures from Exhibit 65, and again you see that the Jackson D. Leonard signatures agree with all of the Jackson D. Leonard signatures and that Susan Leonard signature and that Sondra Susan signature that were written by Jackson D. Leonard and so designated, and that they are not the same writing as those signatures which appear on Exhibit 2.

And I have just illustrated to you the basis for identifying the two signatures as having been written by the individual who wrote the Exhibits U, V, W and Z and why I made that identification, and also to show you why Sondra Sue Leonard could not have signed "Sondra Sue Leonard" as it appears on Exhibit 2, and also that Jackson D. Leonard could not have signed "Jackson D. Leonard" as it appears on Exhibit 2, and that the dates 8-15-69 were written

by the same individual who signed both of the names on Exhibit 2.

Q Is this a convenient stopping place, Miss Tytell?

b3 A Yes, I think so.

THE COURT: Now, ladies and gentlemen, we will stand in recess until 10 o'clock Monday morning. Have a good weekend. Do not discuss the case among yourselves or with anyone else. See you on Monday.

(The jury left the courtroom.)

THE COURT: Now, we have one question left open.

MR. MacDONALD: Yes, your Honor.

One of the pre-trial rulings in the case was to place on the defendant the burden of producing the scientific test results and analyses just as it was on the government, and we would ask that even if Miss Tytell has not reduced to writing what she reported to Mr. Tigue, that nevertheless she orally advised the government of the substance of her opinions as reported to Mr. Tigue, pursuant to that ruling --

THE COURT: What is your view on that, Mr. Tigue?

MR. TIGUE: I would object, your Honor. The ruling was that if there were any reports that they would be exchanged. The government has a one paragraph report, and I only met Miss Tytell myself 24 hours ago, I believe it was,

or 48 hours ago, I've forgotten which, and I do not have a report and I did not get a preview of Mrs. Brooke's testimony and I don't know that the government has a right to a preview of Miss Tytell's.

MR. MacDONALD: Your Honor, I can represent to your Honor that --

THE COURT: We are really only talking about the interests of time, because obviously Mr. MacDonald is going to be entitled to appropriate cross-examination and to be given any instrument that has been prepared or any opinion that has been rendered.

MR. TIGUE: That's right.

THE COURT: So it is just a question of him --

MR. MacDONALD: I think I tracked the rule. The rule says "Results or reports." And I can tell the Court that Judge van Pelt Bryan once ordered me to make known the substance and essence of an expert's opinion where he had not reduced it to writing.

That's the only authority off the top of my head that I can refer the Court to. 16(a)(2) says "Results or reports of scientific tests or experiments made in connection with a particular case."

MR. TIGUE: That may be. But I believe the order in this case was for a report, your Honor.

THE COURT: It seems to me it was as to reports.

Your application, Mr. MacDonald, is unfortunately denied, and you will be given such time as you require to prepare your cross-examination.

MR. MacDONALD: Judge, if I can call to your Honor's attention the language of the government's consent, it was "The results and reports of scientific tests," and the court's order granted that by numeral and did not modify the language in any respect.

So we really do have the two, if I can show the Court the original consent of the government to disclose "Results and reports" and the Court's previous order in this case.

Let me just read it to the Court.

THE COURT: You are talking about 16(c)?

MR. MacDONALD: 16(a), your Honor, sub-2. I'm sorry.

(Pause)

No. I agree. They do not use the word "results." They don't say either.

MR. TIGUE: It is like 3500 material, your Honor. If you don't generate it, you don't have to turn it over.

THE COURT: Your application is denied. You will have appropriate time.

MR. MacDONALD: Yes, sir.

MR. TIGUE: Thank you for the extra time, your Honor.

THE COURT: Very good.

(Adjourned to Monday, January 20, 1975, at 10 A.M.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Eva Eileen Brooke (Resumed)		528	5/1	
Teresa Daniti	606			
Joseph E. Wagner	613	614		
Pearl L. Tytell	622			

EXHIBIT INDEX

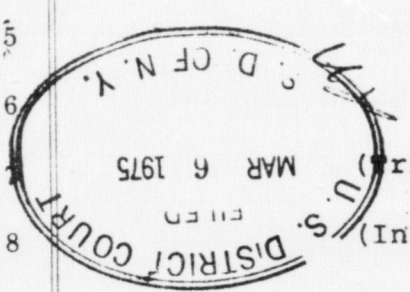
Defendant	IDENTIFICATION	In Evidence
AE		535
AF,AG		543
AA through AD		608
AI		609
AK		612
Government		
100	616	
101	616	

UNITED STATES OF AMERICA

vs.

JACKSON D. LEONARD 74 Cr. 599

January 20, 1975
10:00 a.m.



(Trial resumed.)

(In the robing room.)

MR. MAC DONALD: I should report to the Court that last Friday afternoon, at around 3:30, I had a sandwich at George's and found myself seated next to one of the lady jurors in the second row, and after a social amenity we excused ourselves from one another and moved to separate stools, and I didn't want any appearance of impropriety to --

THE COURT: Continue. So be it. Very good. No problem.

MR. MAC DONALD: Your Honor, I understand Mr. Brown, who represents Kerr McGee, has some documents in respect of a subpoena which was served on that corporation, and I understand he also has a conflicting Court appearance somewhere else and I thought maybe, if Mr. Tigue is willing to accept his production of documents on the corporation's behalf, we could do it here and get it done with.

THE COURT: All right. Good.

Any problem with that?

MR. TIGUE: No, your Honor.

MR. BROWN: If your Honor please, my name is Paul Brown and I represent Kerr McGee.

THE COURT: You address?

MR. BROWN: I am with the firm of Havens, Wandless, Stitt and Tighe, 99 Park.

Kerr McGee was served in the afternoon on Friday with a subpoena duces tecum to produce three separate sets of documents pursuant to the subpoena and a rider attached thereto.

The first item calls for "all documents evidencing any payments in cash, check or other consideration and any assurances and promises of any consideration to the estate of Eve or John Jack Brooke or the estate of John Brooke."

And I spoke with Mr. Tigue on Friday and again on Saturday, to see whether or not we could spare somebody a 2,000 or 1800 mile trip if we could have the documents here in Court today pursuant to that item, and I have those items here and that was agreeable to Mr. Tigue and I would like to hand them to him.

MR. TIGUE: Thank you.

MR. BROWN: And I have another copy here, which

I think I can give to Mr. MacDonald.

THE COURT: Mr. MacDonald, if Mr. Tigue wants to use these, is there going to be any problem of authenticity?

MR. MAC DONALD: I can't conceive of it, but I would like a chance just to look at them to see.

THE COURT: Surely.

MR. BROWN: Your Honor, I had the Legal Department make a search, and while I don't presume that they are business records which with the appropriate certification, we were in a bit of a hurry and I had them put down that they were true copies.

There are two other portions of the subpoena, both of which relate to documents concerning a witness by the name of Eve Brooke, who is the wife of the deceased former employee of the company, and with respect to those portions, I think I've satisfied Mr. Tigue that we have nothing else to produce.

The only other document which has not either been turned over to the United States attorney pursuant to their subpoena upon us some time ago, or which has not been made available to Mr. Tigue, is a technical memorandum between Mr. Brooke and another party relating to a process in issue in a civil litigation between Kerr McGee and Mr.

Leonard.

So that we have nothing else to produce, and if we did, I would object on the ground of work product privilege.

THE COURT: All right.

MR. TIGUE: Your Honor, basically the purpose of the memorandum was to determine whether or not any payments of an unusual or even of an usual nature were made after Mr. Brooke's death, and based on the representations of Mr. Brown and the documents that have already been given to me, I believe that my curiosity is now satisfied.

I certainly don't want technical documents and so forth. I was interested in communications primarily between Mrs. Brooke and Kerr McGee or its attorneys and any money which flowed between the two.

And I would excuse anyone from appearing, with the Court's permission, provided that, should any of these documents in my judgment become relevant, I would not be faced with an authenticity objection.

MR. MAC DONALD: No objection on that count.

THE COURT: Very good.

MR. TIGUE: Thank you, Mr. Brown.

MR. BROWN: Thank you very much, your Honor.

THE COURT: Mr. Tigue, in that connection, we had

a telephone call this morning from one Jim Jennings of Liberty National Bank in Oklahoma.

MR. TIGUE: In a state of some upset.

THE COURT: However, he was trying to obtain from me rulings on whether he needed to produce things today, could he mail them or otherwise, and I had my law clerk tell him that if he wished legal advice that he should consult an attorney and that the subpoena had been served upon him as I understand it, and he should govern himself accordingly.

In any event, I wanted to call to your attention that he did call, with some anxiety in his voice and his questions, and that these are for bank statements of John Brooke at the Liberty National Bank, and he said he got the subpoena at 4 o'clock on Friday, he would be prepared to mail the records, and --

MR. TIGUE: I'll contact him. He has not yet contacted me.

THE COURT: I would suggest that you do.

MR. TIGUE: My name and number was given to him, but I guess he preferred to confer with the Court.

THE COURT: Very good.

B1 MR. TIGUE: I would just like to advise the Court, your Honor, that, on the scheduling, depending on the nature of the cross examination of Mrs. Tytell, I think that the defense with respect to the Swiss Bank documents. In all other respects I believe that Mr. Leonard would rest his case today.

THE COURT: After Mrs. Tytell?

MR. TIGUE: Yes, provided that if something unexpected happens in the cross examination, I would do what I could to repair any potential or actual damage.

THE COURT: Now, in connection with your renewed motion for a continuance, what is it that you would do were you to obtain it?

MR. TIGUE: I would formally, your Honor, request a two-week continuance, and it may require a trip either to Switzerland or to Australia or to both, to determine the facts and circumstances surrounding the loan which has been disclosed in the affidavit which is in evidence, and to determine what route, if any, the proceeds of that loan may have taken through Switzerland.

Part of what I would attempt to establish, your Honor, is the use of correspondent banks. For instance, when I look in Skinner's Almanac, I see that the Australian and New Zealand Bank has a number of correspondents in

Switzerland. On the other hand, I see that Chase Manhattan Bank has a number of correspondents in Switzerland, but some of them are not the same, which would lead me to believe that I think as part of my defense I would like to determine if what in fact happened here was that the loan proceeds went from New Zealand to its correspondent bank in Switzerland, the correspondent bank in Switzerland made a transfer to, I guess it is, the Bank Continentale, and in turn the Bank Continentale transferred the money to Chase Manhattan Bank.

If that could be established, your Honor, I would think that that would conclusively prove that the affidavit which has been alleged to be false is in fact truthful.

THE COURT: Why do you need two weeks to get that kind of proof?

MR. TIGUE: I don't know how I would begin to get the information. I guess part of it would require going to Australia or to Switzerland or both.

THE COURT: Aren't there other ways of proving what the $383,000 involved and where it came from and what it was for?

MR. TIGUE: I suppose there are, your Honor. But I think that there is more than one way to skin a cat, and if I choose, in the best defense of my client, to skin

the cat one way, I don't know that I have to go the alternate route.

THE COURT: Yes. But we are now ten days away from the time you were told about the 383.

MR. TIGUE: True, your Honor. But I have been somewhat employed since that time, feverishly indeed since I got into this case. I have, in my judgment, worked very diligently, slept very little, worked on practically no other clients certainly since the trial began. Last Friday afternoon I went home to sleep a few hours because I simply could not stay awake any longer. I am thankful we didn't have to perform in Court.

And that is not just a self-serving statement. I believe it is a statement of fact, your Honor, that I have not had a reasonable opportunity to do the work that is required in this area.

MR. MacDONALD: In this connection, your Honor, we had not pressed to the outer extremes our pre-trial subpoena of the Leonard Process Co., Inc. for its books and records, having satisfied ourselves that there wasn't particular need at that point to press into the area of segregated files that may have pre-dated the formal assignment date of February 1, 1968.

We would ask for an opportunity at some point

in a voir dire obviously to ask Mr. Leonard about the record-keeping practices and if indeed such documents as notes or cancelled notes or loan repayments during and after February 1, 1968 with any Australian banks were made and kept in the course of the business of Leonard Process Co., Inc., because such a record might well bear on the existence or non-existence of any loan of that amount.

We also should report to the Court that right this morning a subpoena is being served on the Australian New Zealand Bank Group, Ltd. representative's office here on Wall Street and also the Bank of New South Wales representative's office on Park Avenue, and it may be that they will be able to report to the Court that a diligent search discloses nothing.

So I would suspect that Mr. Tigue's application for a general two-week continuance in the absence of some sort of representation about the non-existence of records in the corporation's files or to await determining what third parties have here in New York or at least are willing to produce on fairly short notice here in New York.

THE COURT: All right. I'll reserve decision. Anything else?

MR. TIGUE: No, your Honor.

THE COURT: Good.

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THE COURT: Good morning, ladies and gentlemen.

Now, as sometimes happens, Mrs. Harris called my chambers this morning, and she has a sprained ankle, which has immobilized her. Therefore, Mr. Peake, I am going to call upon you now to serve as a regular juror, and would you occupy seat number 2, please, and Mr. Brocia, please move over one seat.

P E A R L L. T Y T E L L, resumed.

DIRECT EXAMINATION (Continued)

BY MR. TIGUE:

Q Mrs. Tytell, would you back up for 30 seconds, please, and refresh us as to where we left off last Friday?

A Yes. It was that I was comparing the signatures on the face of Exhibit 2. Those signatures, as they appear there, read, "Jackson D. Leonard" and "Sondra Susan Leonard," and I compared them with handwritings of Sondra Susa Leonard and Jackson D. Leonard and also handwritings that appeared on various exhibits, one of which was Exhibit U, and I have just one slide of each exhibit, merely to recapitulate, which will take just a few seconds.

MR. TIGUE: May we, your Honor?

THE COURT: Surely.

A (Continuing) On the left-hand screen will be the signatures on Exhibit U, and it was my conclusion that

both of those names were written by the same individual, as well as the numerals of the data, 8/15/69.

Now, on the right-hand screen are two names written in the handwriting of Jackson D. Leonard. Both of those were written by Jackson D. Leonard, as indicated on the lower name, "Sondra Susan Leonard" where there are initials to the right, the initials of JDL, and it is my conclusion that the individual who wrote the names on the left-hand screen, Exhibit 2, is not the person, Jackson D. Leonard, the writer of those two names on the right-hand.

Now, may we go to the next?

This is a signature, Sondra Sue Leonard, and it is my conclusion that the individual who wrote "Sondra Sue Leonard" on the right-hand side is not the person who wrote the two names on Exhibit 2, "Jackson D. Leonard," "Sondra Sue Leonard," and the dates.

Now, to continue:

Now, here are some writings on Exhibit U, and it becomes clear, based on my examination, that the person who wrote that name, Jackson D. Leonard, and the other writings, which is apparent from that screen, is the individual who in fact did write "Jackson D. Leonard," and"Sondra Sue Leonard" and the names, the dates, the date, 8/15/69, and my explanation on Friday dealt with more detail, but that

was the conclusion that I arrived at.

Q There is no need to repeat the details at the moment.

Now, Government Exhibit 2 is the 1968 income tax return, which is shown on the left-hand side of the projector, is that right?

A Yes, sir; that's right. I have that exhibit before me now.

Q Do you have any further demonstration with respect to Government Exhibit 2, the signatures thereon?

A No, not in connection with determining the handwriting of those two names.

MR. TIGUE: May we turn the projector off for a second, please?

May we have one or two lights on, please.

Q Mrs. Tytell, do you have before you Government Exhibit 1 for identification?

A Yes, sir; I do.

Q Now, with respect to that exhibit, did you examine the signature which appears on the lower left-hand side for the purpose of identifying the writer?

A Yes, sir.

Q And did you compare the signature with the other standards which you mentioned to us on Friday and this morning?

A Yes, sir.

Q Based on that comparison and examination, were you able to arrive at a conclusion as to who wrote Government Exhibit 1, the signature that appears on the lower left-hand corner, "Jackson D. Leonard"?

A No. I could not arrive at a determination on that, and if you like I will explain the reasons for it.

Q With his Honor's permission, would you state how it was that you were unable to come to a conclusion on that?

A Yes, sir.

The signature and also the date alongside of that signature on Exhibit 1 are most unusual in appearance. It appears to be faded, and for the limited time that I was able to examine the original, I could not determine whether or not it was subjected to any tests, because the appearance--its visual appearance is very unusual, and I have prepared a slide, a color slide of that signature.

When enlarged, I think it can be illustrated as to why a determination is so difficult, or, in my opinion, I don't think a clear determination can be made because of the--

Q With the Court's permission, will you demonstrate that slide, please?

A Surely.

Q This is Government Exhibit 1, which is the 1967 income tax return. There is the lower left-hand side, where the signatures appear.

A Yes,sir.

That slide is a very accurate representation of the appearance of that section of the page of Exhibit 1, and that is a very sharp reproduction, and with it being enlarged as it is, it actually makes it even more clear than Exhibit 1 is, and you see that it is--it appears shaded and in areas of the signature there appears to be some smudging which might be interpreted as some migration of the ink, and it would be very helpful to know if any chemical applications were applied or any tests were made to that signature. It might in some way illuminate the problem and perhaps assist in a determination, but in its present state a determination as to whether or not that is a free-hand signature or whether it is something that was written over or whether there has been any attempt at eradication, I cannot determine it.

Perhaps if a more detailed examination were possible--I am not sure that a determination as to what happened to that signature could or could not be made, but at the moment, in its present state, I cannot see how any objective opinion can be made as to its identification.

Q Do you have any further slide on the 1967 return, Government Exhibit 1?

A No, I do not. I think that that is a very sharp reproduction of the page.

MR. TIGUE: I have no further questions.

MR. MacDONALD: We have no cross examination of Mrs. Tytell.

THE COURT: Mrs. Tytell, I would like you to leave Exhibit 1 on and flash on the right-hand screen the admitted signature of Jackson Leonard and the one below, which is Sondra Sue Leonard, which you say was also signed by the same person.

THE WITNESS: Yes, your Honor.

THE COURT: Just for the jury's observation. It was the last picture on the right-hand screen.

(Pause.)

THE COURT: Thank you very much.

Would the jury like to observe this any further?

All right. Thank you very much.

(Witness excused.)

MR. TIGUE: Your Honor, subject to this morning's application, the defendant, Jackson Leonard, would rest.

THE COURT: Is that the defendant's case?

MR. TIGUE: Subject to the application I made

this morning.

THE COURT: The application is denied. So, the defendant having rested, ladies and gentlemen, you may retire for a few minutes, and perhaps Mrs. Tytell may remove the screens.

(The jury left the Courtroom.)

THE COURT: Incidentally, Mr. MacDonald and Mr. Tigue, are these slides marked in evidence? I would assume that they are, as Defendant's Exhibits.

MR. TIGUE: I have not yet marked them, but I will do that in a moment.

THE COURT: I think you might perhaps make an envelope in which you would put the dozen or so that we viewed and marked that as a single exhibit.

MR. MacDONALD: We have a number of open items that I might call the Court's attention to.

Number one is Mr. Wagner's return. I have been in communication orally with both him and Mr. McKay, the attorney for Franklin National Bank, and they have found records in the archives, and they are en route currently. They left the Westbury archives at some point this morning, and I don't know at what point they will arrive.

THE COURT: I trust the weather in Long Island, which is reported to be bad, will enable them to get through.

MR. MacDONALD: They hired the Hercules Messenger Service.

Secondly, we learned about Mr. Tigue's resting at about 9:10 this morning, and we have put out a call for further witnesses, and I think that in the half hour we will have a witness on hand to go ahead.

Thirdly, when Mr. Tomasi, the secretary, testified with respect to several of the defendant's travel and expense records, we at that time did not go beyond the scope of her direct with respect to such records, but in connection with the same application that I mentioned to the Court in chambers concerning Leonard Process Co., Inc.'s possession, custody and control of records or corporate property, no proper privilege may be asserted, we would seek to call Mr. Leonard as a witness to determine in an ordinary hearing before your Honor whether or not certain travel and expense records over and above those they produced here also corporate property, and as long as the authenticity is not in dispute, not subject to an assertion of privilege, this would not take more than three or five minutes, I would think, and at such a hearing, if slides are elicited which will allow a factual determination of corporate property and no privilege attaching, then we would ask for the production of the records physically here in Court and avail-

ability to the Government in a rebuttal case.

If there is an assertion by the witness, we would ask Mrs. Tomasi to come down. I am not sure it is necessary.

THE COURT: Mr. Tigue, what do you say to that?

MR. TIGUE: I would object. I have obtained a number, I believe of all the expense vouchers for 1967, 1968 and 1969, and those have been delivered to Mr. MacDonald, and he used those over the weekend. I am advised that those constitute all of the expense vouchers for that period in question, and it seems to me if the Government is going to put a rebuttal case on they should be very strictly limited to what the defendant's case established, namely, to boil it all down, that with respect to the signatures, I think it is clear, and the others are merely expense vouchers.

THE COURT: Let me ask you:

What is the scope of Mrs. Tytell's proof as far as you see it?

MR. TIGUE: I would say that the scope of Mrs. Tytell's testimony is, one, that there is no question of any kind that Mr. Leonard didn't sign that income tax return for 1968. With respect to the 1967, that no reasonable opinion can be given by any expert in the field and therefore the jury offer a reasonable doubt as to whether or not he signed that tax return.

I don't believe that that in any way relates to what Mr. MacDonald just requested.

THE COURT: No, he is going back to the expense vouchers.

MR. TIGUE: Yes.

THE COURT: You put in certain expense vouchers from which you intend to argue that Mrs. Brooke couldn't be telling the truth, because things couldn't have happened when she said they happened. Isn't that the thrust of it?

MR. TIGUE: Well, I offered the February 1 with respect to that. Yes, your Honor.

THE COURT: Now, I suppose Mr. MacDonald is going after proof in that area to counter what he expects you are

going to argue. Am I right about that?

MR. MAC DONALD: Yes, your Honor. In addition, the expense voucher for '69, March, I think, was put in, as well as August, at the time of signing that return -- correct me if I am wrong -- March of '69, the last three meetings of Mr. Leonard in Australia, and August of '69, showing no entry on the 15th.

THE COURT: Yes, that's right.

MR. TIGUE: No, that's not correct. I didn't introduce the August voucher. I introduced the July 1967 expense voucher.

MR. MAC DONALD: I am not sure -- in any event, if I heard Mr. Tigue correctly at the outset of his statement, that the '67, '68 and '69, T and E expense vouchers which he showed me over the weekend are here in Court, and there's no dispute with respect to authenticity, and there's no privilege asserted with them -- if that's the case, we would ask for no hearing. We would offer the appropriate ones and let your Honor determine relevance on the basis of a specific record.

MR. TIGUE: I think that's fair, your Honor.

THE COURT: Then the question is, for what purpose Mr. Tigue offered his, which puts you to some extent into a position where you may rebut. Mr. Tigue offered

mpe 3

one relating to Mrs. Brooke. Now, did you offer two more?

MR. TIGUE: No, your Honor, just one more. I just wanted to show that the affidavit was inaccurate in one respect.

MR. MAC DONALD: There were at least four that were marked.

MR. TIGUE: There were three sets, essentially. There was the July '67. There were three in that set. There was March of '69 and there was February '71. There were three sets. Those three sets are in evidence.

MR. MAC DONALD: July '67 was offered for what purpose?

MR. TIGUE: I don't know that I want to tell at the moment. It's in evidence and beyond that I ought to divulge --

THE COURT: Well, then obviously Mr. MacDonald is entitled to more scope in putting in others than if you specify. You are at liberty to not specify, but I then must allow him more scope in endeavoring to rebut what he thinks you might be thinking of.

MR. TIGUE: Well, when I offered them he should have objected. Now, if he wants to show that Mr. Leonard wasn't in Dallas or wherever those expense vouchers say in 1967, he has a right to do that.. I don't know that I

have to give him my conclusions or my thoughts in advance of summations.

Let the record reflect, your Honor, that I am giving Mr. MacDonald back what he has had all weekend, the expense vouchers for MacDonald processing.

THE COURT: Mr. Tigue, while I am thinking about it, and in light of Mrs. Tytell's testimony, I gather you are going to argue that this jury couldn't conclude that Mr. Leonard signed the '68 return, and therefore he didn't subscribe it within the meaning of the statute, is that correct? Is that the thrust of the argument?

MR. TIGUE: It is, your Honor.

THE COURT: Aren't I required to then charge the jury and if they find the signature was authorized by him, that that constitutes a subscription within the meaning of the law?

MR. TIGUE: I would say no, your Honor. I would offer your Honor a case I found over the weekend, U.S. vs. Harper, which is November of 1971. That's a Seventh Circuit case, where the charge was the same and the Court held that to sustain a conviction the defendant must have signed the tax return which is alleged not to have accurately reflected wage register results.

mpe 5

It seems to me if somebody is charged with making and subscribing a false income tax return, it must be proved that he signed it. I think Mr. MacDonald should respond whether he intends to introduce any more rebuttal evidence.

For criminal purposes, you can't hold a person guilty of the statute charged in this case unless they find that he signed and filed it and there is no evidence that he did so.

Indeed, the evidence is the other way.

THE COURT: It's a jury question at this point.

MR. TIGUE: I don't think that's true at all, your Honor. I think it's a question of law. There's no evidence that Mr. Leonard authorized anybody to sign the return, and I would ask your Honor to dismiss count 2 of the indictment at the end of the Government's case unless some more evidence is coming in.

I think Mr. MacDonald can speak to that, since his witnesses are on the way.

THE COURT: Well, I would think it string if a person -- I will read your case carefully, but I think it's string if a person could hypothetically, knowing that his return was false, let his accountant sign it, on the theory that thereby he avoided the statute.

MR. TIGUE: I am in total agreement with your Honor except the last words, in accordance with the statute. 7206 (2) is the second portion of that statute, and that reads that anybody who causes anybody else to do it commits a crime.

The Government charges a specific crime in this case and they haven't proved it. They could have charged him with violation of both statutes and taken their alternative positions with the jury. They haven't done that. It seems to me they have selected precisely the statute. The Internal Revenue Code speaks of two types of crime specifically, those who sign and those who cause others to sign.

And the Government has charged him with signing.

I would ask not only that '68 be dismissed by '67 as well.

THE COURT: Well, '67, I would not dismiss on that ground by any means, because as far as I am concerned, were I a juror, which I am not, I would conclude that Jackson Leonard had signed that regard beyond a reasonable doubt. Mrs. Tytell notwithstanding, the Jackson Leonard signature, while it is smudged, I don't see that it's his signature and from a comparison of the two up there the jury couldn't so find. But we aren't dealing with '67. We

mpe 7

are dealing with '68.

MR. MAC DONALD: I have two cases to call to the Court's attention, which may or may not be helpful. They aren't squarely on the point. We looked for a case such as the one that was handed up and we would like a chance to respond.

There is a statute that you may not be aware of, 6064 of the Revenue Code says, "The fact that an individual's name is signed to a return, statement or other document, should be prima facie evidence for all purposes that the return, statement or other document, was actually signed by him."

That was added to the Revenue Code --

THE COURT: What is the title?

MR. MAC DONALD: 6064 of Title 26, your Honor. That was added to the code in 1949, as I recall, in the same bill which added the charge under which the defendant is now charged, the predecessor of 7206(1), and frankly I haven't gotten an opportunity to go back beyond that into the history very far, Judge, to see exactly what Congress intended in making an all-purposes presumption.

In addition, there are two Second Circuit cases, Albany, 224 Fed. 2d, 879, and Allied Stevedores, each of which involved an accountant signing the defendant's

return under the old statute where it was a crime to evade your tax obligation and the statute specified the means of filing the false return.

The Second Circuit held that an agent can sign and obligate the principal thereunder 18 USC, Section 2, the aiding and abetting statute, and it doesn't take an actual subscription by the defendant himself.

THE COURT: How about Mr. Tigue's argument, however, that another section, the very section section of the code, provides for making it a crime to have another sign your return, which is in fact false? Isn't that an excusio alterius?

MR. MAC DONALD: I think on the insertion of the provisions in a later codification, we have found no legislative history which pointed out that Congress intended to limit the applicability of either of Sections 7201. They refer to sections that are independent of one another and not mutually exclusive. We haven't gone back as far as we need to go in the legislative history, and we would ask the Court to give us an opportunity to brief more thoroughly the legislative history to answer Mr. Tigue's suggestion that a narrow reading and a limited reading is the appropriate one.

THE COURT: The only problem now is time.

MR. MAC DONALD: Yes, sir.

THE COURT: Because obviously you gentlemen will probably be summing up in the morning, with me charging early in the afternoon.

MR. MAC DONALD: And faced with the imminency of a dismissal, we would certainly like a chance to spend the necessary hours on the books.

THE COURT: Very good.

MR. MAC DONALD: We would take a chance on a continued reservation and post-trial briefing.

With respect to the travel vouchers, DX AC and AD, are 1967 records for one month. We would offer the balance of '67 to complete Mr. Leonard's comings and goings during that year.

Exhibit AA is a 1969 March travel record and we will offer the balance of 1969 to complete the jury's picture with respect to the comings and goings during that year when returns were signed and people were seeing one another.

I don't have, unfortunately, a 1968 to round it out, but we would simply say that the last exhibit, your Honor, AI, is the 1971 exhibit. I guess we don't have in court the balance of '71. I would certainly like July of

'71, the very date that Mrs. Brooke said she believed the meeting occurred and not February, not be limited to February.

Do we have '71?

MR. TIGUE: I don't know that I have that here? I'' take a look. I didn't get the whole year '71 because I wasn't interested in the whole year.

Are you finished with that point? I would like to respond.

MR. MAC DONALD: Finally, since 1968 is the year in which the first Government's Exhibit 1 was signed, your Honor, the waiver by reason of the introduction of any of these records by the defendant now opens up for the first time, gives the Government the opportunity, and I should tell the Court that -- withdrawn.

I guess that is as far as I am prepared to go at this minute in specifying the purpose that we would want to serve in offering these exhibits. If there is more specificity in the defendant's offers, we can be more specific. Or if your Honor wants to hear further, I will be happy to explain further.

THE COURT: Go ahead, Mr. Tigue.

MR. TIGUE: I don't believe there is a general doctrine of completeness, that if one month is introduced

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in evidence and it is relevant, that the whole year goes into evidence. I don't know what Mr. MacDonald has in mind but it seems to me I would object on the grounds of relevant as to where he was as to each month in the year. I don't know what relevance that has. If I introduce one expense voucher and Mr. MacDonald can say "For completeness let's put in all the vouchers he has ever had," beyond the relevance of that and I object on the grounds of relevance. I don't think every expense voucher for every officer and every employee of the Leonard Process Company for those years, '67, '68, and '69, '70 and '71 are relevant.

MR. MAC DONALD: I am only referring to Mr. Leonard. We make no offer as to the other officers.

MR. TIGUE: With respect to Mr. Leonard, I would say the same thing. What the possible relevance is there put in the fellow directors expense voucher for other periods?

I would also like to respond with respect to the signing on the evasion. Evasion is a different matter, your Honor. It is an entirely different charge, and the cases say that for purposes of evasion signing doesn't make any difference.

But here the precise charge is that he sub-

scribed his tax return. There is no evidence to that effect. The presumption which Mr. MacDonald mentions in 6064 is now out of the case because the only evidence is to the contrary, offered by Mrs. Tytell, and I don't believe that that survives any more.

THE COURT: I didn't catch that last point.

MR. TIGUE: The presumption which is mentioned in Section 6064 by Mr. MacDonald is now out of the case. That is a rebuttal presumption rebutted by evidence. It has been. The presumption is now gone. There is no longer any benefit of that presumption in the case for the Government, and I think that absent a showing that Mr. Leonard in fact authorized that signature, I would think -- even if you look at the Government's own requests to charge before Mr. MacDonald apparently was aware that the tax return had not been signed by Mr. Leonard, it says right in there that one of the essential elements is that Mr. Leonard sign the tax return.

And I think that a change in theory now just doesn't wash after all the evidence is in.

They've got to charge him with 7206(2) if they want to get him on causing somebody else to sign it, or they have to get him on 7201, which is evasion.

THE COURT: Do we have the U. S. Code here that

you had the other day? I gave it back to you.

MR. TIGUE: 7206(2), your Honor?

MR. MAC DONALD: I think I have another copy of that provision, Judge.

MR. TIGUE: The Internal Revenue Code your Honor wants?

THE COURT: Yes.

MR. MAC DONALD: I have it. (Handing).

THE COURT: Mr. Tigue, my chambers is apparently acting as your surrogate, because now the Liberty Bank in Oklahoma has now called and asked whether they should have all the information in Court in the morning.

MR. TIGUE: I would say no, your Honor, provided I am --

THE COURT: I am going to let you do that.

MR. TIGUE: I will as soon as I get a minute.

THE COURT: In any event, they have now called, and I will have my law clerk say that you will be in touch with them within the hour.

MR. TIGUE: Would you ask him to get me the phone number?

THE COURT: All right.

(Pause.)

MR. TIGUE: I guess that's all I have to say,

your Honor.

THE COURT: It is not all that clear, Mr. Tigue, and I'll give that further consideration during the day.

All right. Incidentally, it is your position that the presumption, Mr. Tigue, under 6064 does not survive to the jury room, given Mrs. Tytell's testimony?

MR. TIGUE: I think that's right, your Honor. I think that survives the motions at the end of the Government's case in the absence of proof. It is like the presumption before it was declared unconstitutional.

THE COURT: I mean there is proof and there is proof. We now have opinion beyond evidence, and I am not prepared to say what weight should be given to it.

Perhaps great weight. But the question is whether this jury quest at this point, and I have to charge them as to the presumption and as to under what circumstances it falls away.

Why is that my question? This is a fact question.

MR. TIGUE: I believe with respect to 1968, your Honor, there is no evidence of any kind as to who signed that document, none. And no jury can reasonably conclude--

THE COURT: There is no direct proof of any kind.

But Mr. MacDonald says that under Title 26, 6064, that the mere filing is prima facie proof that Mr. Leonard signed it.

Now, it is a question of what the hardiness is of that presumption. Is that something the jury has to grapple with or do I have to grapple with it?

MR. TIGUE: I think that you have to grapple with it, your Honor. I think that your Honor even observed, before we finished the motions at the end of the defendant's case, that it was clear to you, without Mrs. Tytell, that there was no signature.

THE COURT: I certainly made that comment and I stand by it. The question is whether that question is mine or theirs.

MR. TIGUE: I believe it is yours, your Honor, because the presumption, I think, is gone once there is evidence that is admittable to rebut it.

Now, the Government has difficulties proving, for instance, who signed tax returns, and that gets them past the motions. If there is evidence in the case which indicates to the contrary, I believe the law is the presumptions leave the case upon introduction of evidence on the top of it.

THE COURT: My only question at this point is as

follows: I can see that happening, and I may even be wrong on this, if you had a witness who said, "I saw Leskowicz sign 'Jackson D. Leonard' on that return." That would be direct proof. This is opinion beyond evidence, which of course is of a little less forcefulness by and large. Not that it isn't forceful in this case or less than that, but it still is opinion evidence.

Let me give consideration to that.

MR. TIGUE: My last point, your Honor, is that if there is no evidence supporting the Government except the presumption, if as a legal matter the presumption is removed from the case, then there is no evidence except what Mrs. Tytell says.

THE COURT: I agree. The only question is whether the jury's task is to remove the presumption or mine.

MR. TIGUE: Of course Mr. Leskowicz may walk in the door any minute and take the stand and we may have some conversation about this.

THE COURT: Anything else on that, before the Government goes forward?

MR. MAC DONALD: The scope of Mrs. Tytell's direct testimony, whether it is fair --

THE COURT: In February of '71. You don't really have a need of any more of '71. All they are doing

is going after that February date in their affidavit.

MR. MAC DONALD: Yes, sir. Until I look at the July 1 to see whether I want to offer it, I have no offer in that respect.

For '67, we have two of the 12 and in '69, we have one of the 12. And I withdraw my earlier offer of '68, Judge, and limit it now to rounding out those two calendar years for which --

MR. TIGUE: I am not clear on the offer.

THE COURT: He is offering the balance of the year '67 and '69.

MR. TIGUE: I believe he just withdrew that.

MR. MAC DONALD: I withdraw '68 because I have no exhibit from you which pertains to that year.

MR. TIGUE: My objectionremains the same, then.

May I give a copy of US v. Harper to your Honor? I have a copy for the Government as well. That is the Seventh Circuit case I mentioned, about the requirement to sign the tax return.

THE COURT: Mr. Tigue, your only argument is relevance and you are not prepared to tell us why you have offered these, and I am going to allow them in evidence.

MR. TIGUE: I am not prepared to say. With respect to '69, I think it is perfectly clear to offer them.

Laski said he had a conversation with my client on St. Patty's Day 1969 and Mr. Leonard was in Australia at that time. That's clear.

THE COURT: You don't need any more of '69.

MR. MAC DONALD: He doesn't. I think Laski's testimony at one point in response to a cross examination question was, "I am as sure of the date March 17 and 18 as I am that it was 14 pages."

THE COURT: All right.

MR. MAC DONALD: So I think he places it, his best recollection, in the Spring of '69.

THE COURT: All right. I will permit both of your submissions to go in to show that Mr. Leonard was in fact in this country at other times during the two years in question and to show at what times he was in the country during those two years in question.

The objection is overruled.

MR. MacDONALD: Judge, I didn't specify this because Mr. Tigue didn't, but I don't want the Court to be misled. I have an additional argument which I hope to make from Mr. Leonard's recordkeeping practices and travel expense practices as backed up by the back-up for one of those months in 1969, and I'll be happy to specify the arguments. I don't want to make the argument before the jury for the first time and have your Honor sustain Mr. Tigue's objection that it was limited for that purpose.

MR. TIGUE: I didn't object for any other purpose. The purpose was to show not the recordkeeping practices but where Mr. Leonard was. That's why I objected on the ground of relevance, because I've come clean now why I've put in 1969.

THE COURT: Is there any question as to fabrication of these documents to meet a specific need, if I can put it that way?

MR. MacDONALD: Let me just say this. The practice from the document appears to be to have a summary sheet showing places and hotel bills and travel bills and taxi cab bills, with a back-up attached, and it would appear to the naked eye to be complete on the outside; that is, the summary doesn't leave out stops.

The next month, after March of '69, Mr. Leonard's

records indicate a trip to London, Milan, Rome, Bucharest for meetings with "BP Power Gas" April 12th to 23rd inclusive, and as you look down the list you see stops in London, Milan, Rome, Bucharest and then a final entry "miscellaneous and tips entire trip," and I guess the round trip airfare was the first entry on the top.

When you go to the back-up and you look down at the actual airline tickets that were employed for this trip, you see Mr. Leonard did not list on the outside sheet that on the way back from Bucharest he left there at 8:20 a.m. on April 24th and arrived in Zurich, Switzerland and left Zurich, Switzerland at 12:35 noontime, also on April 24th, to fly on to Madrid and then to New York.

The Government had in mind that practice in recording the recordkeeping on the outside cover sheet and the tickets behind and had in mind calling to the jury's attention a two-hour stopover in April of 1969 in Zurich, and I don't mean to withhold from the Court that information in respect of the very next month after the March trip, which Mr. Tigue will be asserting is a complete and accurate submission of his travels in March.

MR. TIGUE: I don't believe that there is any evidence whatever, your Honor.

THE COURT: A two-hour stopover in Zurich?

MR. MacDONALD: Yes, sir. The next flight left at 12:00 noon and he left Bucharest at 8:20 on the same day, and I don't know how long it takes to fly from Bucharest to Zurich, but if it is a couple of hours, that would be 10:00. And then at 12:00 noon he flew out again.

THE COURT: Mr. MacDonald, my wife lived in Zurich for two and a half years and I have flown Swissair 101, something like that, taken that flight probably 40 times.

I don't think I would permit you to argue to the jury that he used that two-hour period to go into Zurich to meet a banker and out again, because it is not feasible and I don't think it would be fair to allow the argument. So I will sustain the objection to that.

MR. MacDONALD: Yes, sir.

THE COURT: It is not practical as a matter of fact. The Zurich Airport is about 35, 40 minutes out of town.

MR. MacDONALD: There are no banking facilities at the airport?

THE COURT: Well, yes. But that is where you go to get currency to pay hotel bills. It is for change. The banks themselves are way in town.

MR. MacDONALD: I defer to your Honor, but I

really would have thought that a deposit could have been made at a Zurich Airport branch--

THE COURT: A deposit could be made. That could be done. What is the deposit you are talking about? But banking conferences you couldn't have, as a practical matter.

MR. MacDONALD: Yes, sir. Mr. Leonard, the Government will contend, has employed Swiss bank accounts in the past, and the evidence shows that, and that employment includes a deposit opportunity in April of '69, one that he carefully left off on his itinerary which he put on the outside of the records which were being retained by the corporation. And that really is the limit and extent of the inference that--

THE COURT: Mr. MacDonald, in my discretion I am going to rule that out.

MR. MacDONALD: Yes, sir.

I don't think the balance of '67 is particular important. We would withdraw the offer.

THE COURT: Fine. That leaves us with what portion of '68? You want all of '68?

MR. MacDONALD: I have a similar inference with respect to '68, but it is less tangible and I have not offered that, and I was willing to forego it and I will.

I have a note that the witness is here.

THE COURT: Very good. Should we take perhaps a five minute recess for counsel and then bring in the jury?

MR. MacDONALD: Yes, your Honor.

THE COURT: Very well.

MR. TIGUE: One more thing. Mr. MacDonald and I have still been arguing about this, but I would still like very much to have my statement to the jury that when the contract, which is Government's Exhibit 66, was produced to the Government, it had no holes in it, the holes were placed in it thereafter.

MR. MacDONALD: Why don't we talk aloud? I hoped that I might be able to obtain the admission of the report of laboratory examination which I gave to Mr. Tigue without the necessity of bringing either Mr. Cantu or Mr. White to New York to testify that that's what they did and that's their opinion. If you want me to, I will call them to New York. I think it is much more accurate to do that than it is to start talking about what happened in Washington, and I don't know what happened in Washington.

MR. TIGUE: Let me return the report. I don't want anything to do with that.

All I know is that Mr. MacDonald, in the presence of the jury, said, "And this was produced pursuant to subpoena and order," which I think was a little out of order

myself, but that was said and there was no objection to it.

The jury now can draw the inference that Mr. Leonard or somebody in his control put the holes in it. That is not the case. The United States Government did, and, by golly, I think they ought to 'fess up to it, and I think I have a right to that on the record, to show that the holes--

THE COURT: We passed that question, and I thought Mr. MacDonald at some point was going to be prepared to stipulate that the Government had caused those holes to be put in that paper and that that was going to be the end of it.

MR. TIGUE: I did, too.

MR. MacDONALD: I did not think I was going to limit the Government's presentation to that, Judge. I thought we were going to explain the holes properly so the jury has the truth in that respect, and I am going to call the hole puncher. I don't think I meant to--

MR. TIGUE: It seems to me I've been bushwacked by the Government. They could have put it in their direct case. They chose not to. In my defendant's case, there was not a word about any ink test or anything of the sort. Now the Government wants to come in and rebut something that has never been placed in.

I would object to that and I think I have a right to what the representation was on the record, and I believe there was a representation that at some point--

MR. MacDONALD: Let's call attention to the page and we'll address ourselves to the precise scope of what I said. I'll stand on the record. I don't think I told the Court that I would limit it. I thought I said I thought for sure this matter would be fully aired either on the cross examination of one of the Government's witnesses, perhaps Lasky, or in Mr. Leonard's cross examination and that the jury would learn about the hole punching. I don't think I said I went further and put language of limitation on my statement. If I did, I will be bound by it, of course.

THE COURT: Let's find it and then we will at least know what we are talking about.

(Recess.)

(Jury present.)

MR. MacDONALD: The Government calls Mr. Edward A. Leskowicz.

E D W A R D A. L E S K O W I C Z, called as a witness, by the Government in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MacDONALD:

Q Mr. Leskowicz, will you tell the jury, please, your education and professional experience?

A Well, I am a graduate of St. John's University, with a Bachelor of Business Administration. I am a certified public accountant, State of New York. I've been qualified as a CPA since 1950. I've been practicing in the public accounting profession since then.

Q And are you a partner in the firm known as Leskowicz, Brower & Driver?

A I am.

Q How long have you been a partner in that firm and how long has it been in existence?

A I believe it is in existence for about ten and a half years.

Q I would like to direct your attention to the week ending August 14, 1969 and ask you if during that week you and your employees had occasion to render some services to Jackson Leonard, seated here, in respect of his 1968 tax returns?

A I think we have, yes.

Q I show you what has previously been marked Government's Exhibit 80 for identification. I would like you to

direct your attention, please, to the bottom half, beginning with page number 1750, and ask you to identify, please, those pages and tell the jury when and under what circumstances you first saw those papers.

MR. TIGUE: Excuse me. May I overlook that, your Honor? I don't know which pages are being referred to.

THE COURT: Any objection?

MR. MacDONALD: No.

THE COURT: Come up.

A These pages were submitted to me by Mr. Leonard, and it included a letter from him with his instructions, and also details as to his income from his business, and also the deductions.

Q And would you address your attention, please, to the top half of that exhibit, the pages that precede the page whose number I put in the record earlier, and tell us, if you will, please, what those pages represent and identify those for us?

A This is the work copy of a tax return that was prepared for Mr. Leonard and his wife for 1968 by one of the men in my office.

Q Mr. Nothofer?

A Mr. Nothofer.

Q And I would like to direct your attention, please, to the page bearing the number 1738 and ask if your recognize any of your own handwriting on that page.

A The only handwriting that appears on this particular that is my own are the two sentences or two lines on the bottom of the page.

A B1

Q Beginning "La Porte"?

A La Porte.

Q And the balance is in Mr. Nothofer's?

A And the balance is in Mr. Nothofer's.

Q And having previously examined that draft return, is that your only contribution to the return insofar as you can now recall?

A Well, when you say "contribution," we review the return, and this is the only additional thing that we have placed on this particular page at this particular time.

MR. MacDONALD: All right.

Q I would like to show you what has been marked Government Exhibit 2 for identification and ask you first of all to address yourself to the signatures which appear on the bottom of the cover page, and tell the jury, if you will, if you can identify any of those signatures.

A Well, these particular signatures, I signed them on behalf of Mr. Leonard and also for Mrs. Leonard.

Q And all the writing that appears on the bottom of that page, including the firm name, Leskowicz, Brower & Driver?

A That's my own.

Q I would like to address your attention to the entry of "Interest, Miscellaneous Deductions," in summary

Schedule C, which corresponds with the draft, and ask you to tell us if the matter which you inserted on the draft appears in the final as filed.

A It does not.

Q I would like to hand you Government Exhibit 102 for identification and ask you to tell the jury, if you can, if you can identify that, please.

A This is a memorandum that was prepared by Allan Parker, attorney for Shea, Gallup, in reference to a matter that we had discussed on the reporting of La Porte shares of stock that were received by Mr. Leonard.

MR. TIGUE: I object to this, your Honor. It seems to me it is beyond rebuttal evidence at this stage of the trial.

THE COURT: Come up.

(At the side bar.)

THE COURT: Will you give me the background of this?

MR. MacDONALD: It has been represented by Mr. Leskowicz that on or about the date of the opinion on Exhibit 2, he received this copy of it, and, as indicated in that opinion, there was twice stated that Mr. Leonard ought to include a notation such as the one that appeared on this page.

Mr. Leskowicz, upon directions of counsel, made that insertion. He will then testify that on the day before he signed, in a conversation with Mr. Leonard, Mr. Leonard directed him to delete that insertion on the return as ultimately filed, and in response to those directions, as his agent, he obeyed.

In addition, he will testify that in the same time frame Mr. Leonard advised him that he should sign the return in his behalf as an agent, because Leonard said it was a refund return and didn't require a check, in any event, and he was his agent, and he directed him to sign the return and cause it to be filed.

It is to complete the discussions which they had on the 14th, so that nothing is withheld in terms of the scope of his agency.

THE COURT: The objection is overruled.

MR. TIGUE: Your Honor, with respect to Mr. Leonard telling him to sign the return, that is the only thing in issue, whether this man was authorized to sign the return. This is not to prove that Leonard was telling him to falsify the return. The Government could have proved that in the case in chief, and I think this is grossly unfair, to attempt to prove this now, when there has been nothing in the defendant's case.

This doesn't refer to every conversation that he ever had. The rest of the conversation is highly irrelevant and highly prejudicial. He's got this in evidence, and he can make whatever argument he wants to make from it.

MR. MacDONALD: If he selected part of his conversation authorizing an agent to act, that occasion for also including specific directions to the agent to do something on the document that the agent was preparing--it's Mr. Leonard's hard luck that he directed the agent to remove that material, your Honor, and it was part and parcel of the scope of his authority to do Mr. Leonard's bidding in that regard.

It's a fact--

THE COURT: I think also, Mr. Tigue, it does go to show that Leonard had looked through this return, and it was therefore something that was being signed by this gentleman without Leonard having seen it, because this is proof that Leonard had looked through it and knew what he was authorizing his agent to sign.

MR. TIGUE: But that is not the issue. The issue is whether he had authority to sign.

THE COURT: But another issue here is whether or not in authorizing him to sign it, Leonard was aware of the extent of the contents of the return, what was included

and what was not included in it.

MR. TIGUE: I disagree.

THE COURT: Leonard takes the position, "I told him to sign it, but I didn't know what was in it."

MR. TIGUE: This is in evidence, your Honor. This is not rebuttal testimony. He could have done this before, but he decided not to, because he didn't want Mr. Leskowicz cross examined. Now he's forced to put him on the stand.

THE COURT: Well, I am afraid I have this a bit differently. This is a point where you put on Mrs. Tytell to show that he signed this return, and that has two things flowing from it: One, it is not his signature, and, two, it opens up the question of whether even if it is an authorized signature, did Leonard know what was in the return at the time that he authorized the man to sign it?

Both of those things are necessarily of consequence here.

Now, his instruction to take something out and saying, "Now you can sign it" is evidence the jury could well consider on the question of whether or not he knew what was in it and what was not in it at the time the agent signed it. It didn't show the agent signing it without proof of knowledge of the contents on the part of Leonard.

I overrule the objection.

(In open Court.)

MR. MacDONALD: I offer Government Exhibit 102 for identification.

MR. TIGUE: I have already stated my objections, your Honor.

THE COURT: Yes, and they are overruled.

(Government Exhibit 102 for identification was received in evidence.)

Q Mr. Leskowicz, would you read to the jury your handwritten insertion in the draft, Government Exhibit 80, please, those two lines.

A "La Porte Australia, Ltd. capital shares received for services. No market value for capital shares."

Q Did you have a conversation with Mr. Leonard in respect of removing that disclosure from the return as ultimately filed?

A I talked to Mr. Leonard about this particular remark that I wanted placed on his return, and Mr. Leonard informed me that he doesn't want it to appear on his return.

Q And in response to those directions did you take some action?

A Well, he received his return without those--with those two sentences out.

Q Removed?

A Removed, or actually--let me explain what happened.

This return, we were trying to get this return to Mr. Leonard, and I had been reviewing this thing, and this is what I wanted to place on it. This had already been prepared. And he didn't want it, so I wanted to change this particular sheet to insert this item in there, and we didn't put it on there.

Q Tell the jury what if any discussion you had with Mr. Leonard concerning the signing of his name and Sondra Susan Leonard's name on the first page.

A This was in the summertime of August, and I believe in looking at the calendar you will find the 14th to be on Thursday and the 15th on Friday. Mr. Leonard usually leaves fairly early in the week to get down to Beach Haven, and we had talked about it and tried to get his return to him, but he said he's taking off, and there's no reason why I couldn't sign for him, because there's no money to be paid with the return.

Q It was a refund return?

A It was a refund or--yes, a refund return. He asked me to sign them, and I signed them and sent them out, and I also sent him a copy of this return with our normal

transmittal letter, and I believe I must have made a note to him and told him exactly what I had done, and that must have been received by him the following Monday.

Q Is the yellow carbon copy of the normal transmittal letter part of the exhibit?

A That's correct. That appears here.

Q And is it your best recollection that the note you described was placed on the ribbon original of that?

A No. Just a handwritten note that I would have placed on there.

Q It doesn't appear on the yellow carbon?

A No; it doesn't.

MR. TIGUE: I object to what would have happened. I would like to hear the testimony of what he did.

THE COURT: Let me hear the answer.

(Record read.)

THE COURT: No, overruled.

THE WITNESS: What do you mean by "ribbon copy"?

MR. MacDONALD: Ribbon or original copy of the letter dated August 14, 1970.

THE WITNESS: On that one, I probably placed a little note to Jack when I wrote, that I signed the signature.

MR. TIGUE: Objection.

THE COURT: Strike that.

(To the witness.) Do you have a recollection, one way or the other, Mr. Leskowicz?

THE WITNESS: Do I have a recollection? Normally, this is what I do, yes, but specifically--

THE COURT: Specifically, you don't have a recollection.

All right.

MR. MacDONALD: No further questions.

CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. Leskowicz, do you remember on January 2nd of this year having a conversation with a man by the name of Leonard Rosenblatt and myself?

A January 2nd? Was that the date you were at my office?

Q Do you recall whether it was--

A Well, you are asking me--I don't have my calendar with me. Was that the date you were at my office?

Q Well, I can't testify. I'm not under oath. You are, sir.

A Well, I can't testify unless I have my calendar with me.

Q Do you recall a conversation with a Mr. Leonard Rosenblatt, a law student from my firm, and me, at your

office?

A Yes.

Q And at that time did you say that you had no recollection of these events back in 1968?

A That's correct.

Q Do you recall being informed that the charge was that Mr. Leonard signed a false tax return and having been asked whether or not you had any information on that, and you said no?

A Signed a false tax return?

Q Yes.

A I don't recall what you meant by a false tax return.

Q Having signed a false tax return.

A That I signed a false--

Q No, no. That Mr. Leonard signed a false tax return.

A No.

Q You don't recall that? You have a clear present recollection of a conversation you had in August of 1968 with Mr. Leonard; is that correct?

A Only because I have some documents here that refreshed my memory on some of these things. If I had my date book or my calendar with me, I would tell you exactly

the date you were at my office.

Q Do you remember saying that you sent the tax return over to Mr. Leonard's office, or Mr. Leonard's office came to pick up the tax return?

A What tax return are you talking about?

Q The 1968 one, in front of you, that you signed, Mr. Leskowicz.

A This was not sent to Mr. Leonard. It was sent out from my office, the original.

Q To where?

A To the Internal Revenue Service.

Q I'm talking about--

MR. TIGUE: Let me withdraw that.

Q Do you recall saying on January 2, 1975, that you sent the tax return to Mr. Leonard's office?

A This particular return?

Q Yes, sir.

A Well, I would say under normal circumstances, yes, that's exactly what I would have done.

Q Did you say in fact you had given it to Mr. Leonard?

A I had not seen any of these particular documents. I would say yes. In 99.5 per cent of the time, this is exactly what happens. Now, when this particular document

was presented to me and I saw the signatures on it, I recalled what happened at that particular point. I was not--nobody showed me this thing before.

Q Before you testified today, could you tell us if you ever talked to Mr. MacDonald?

A Oh, yes.

Q Would you say how many times?

A Maybe four or five times.

Q And during the course of those conversations, did he show you documents?

A Yes.

Q Did you go over hundreds of documents?

A Dozens, probably.

Q And he never showed you the 1968 income tax return?

A The only copy I have seen was my own copy of the return.

Q Did you tell Mr. MacDonald any lies?

A No.

Q Did you lie to the agents in the course of their investigation and audit?

A I certainly did not.

MR. MacDONALD: Your Honor--

THE COURT: Sustained as to form.

Q You handled the investigation of this case on behalf of Mr. Leonard, did you not?

A I tried to work it out for him, yes.

Q Did you ever tell Mr. Laski that you signed the return?

A Nobody ever asked me.

MR. MacDONALD: Mr. Leskowicz, when I stand up, wait.

MR. TIGUE: I think the witness has taken enough from you, Mr. MacDonald. Let the Court rule.

THE COURT: Overruled.

Q Did you ever tell Mr. Laskowitz of the Internal Revenue Service whether or not you signed this return?

A Nobody ever asked me.

Q Did you ever tell Mr. Rothstein of the Internal Revenue Service that you signed the tax return?

A No.

Q Did you ever tell Mr.--

THE COURT: Mr. Tigue, his answer is all-inclusive. You could go on reading names, I gather, from now until you run out of them, and he would say the same thing.

Q You dealt in the course of this investigation with some 17 Internal Revenue Service agents; is that correct?

MR. MacDONALD: Objection. Beyond the scope.

THE COURT: No. Overruled. I will permit it.

Q (Continuing) Is that correct, sir?

A I think there were quite a number. I haven't been able to keep track of them right now.

Q Is that about right?

A It could be. It was a good number.

Q And you never told a single one of them, ever, that you signed the income tax return; is that right?

A That's correct.

Q And do you recall when I originally approached you to discuss this case that you refused to talk to me? Yes or no, Mr. Leskowicz?

A Yes.

Q And you said you were not going to talk to me until Jackson Leonard paid you some money, is that right, and you claimed that he owes you some $16,000; is that correct?

A Somewheres in that area.

Q And you served him with a part of that bill right on the eve of the original scheduling of this trial, didn't you?

A I don't think so. That bill has been served to him several years ago, the original bill.

Q Let me show you Defendant's Exhibit AN for identification. Tell us if that refreshes your recollection, sir, whether or not on October 7, 1974 you gave Mr. Leonard a bill for a couple of thousand dollars.

A The bill that you're--that I am referring to was a bill that I rendered to Mr. Leonard on May 4, 1972, of $12,800--

Q I show you a bill of October 7th. Does that refresh your recollection?

A Yes. That's another bill.

Q And you knew that Mr. Leonard was going to trial, did you not?

A I did not.

Q You refused to talk to me until Mr. Leonard would give you some money; is that correct?

A That's correct.

Q And, incidentally, you got some money from the Government here, didn't you?

A I did not.

Q Did you ever get $20 for your visit--

A I never got any money from the Government.

Q Have you ever signed any expense vouchers?

A I haven't signed any expense vouchers.

Q Has it been offered to you, sir?

A Nothing, other than the fact that I read in the subpoena that I am entitled to car fare, something of that sort.

Q So that when you come to Court you get $20?

A Well, I don't know. It's not going to make a big difference to me.

Q Did Mr. MacDonald tell you he would give you $20 for each time you came to his office?

A No. He never told me that exactly.

Q Will you tell us what he said, in substance?

A That I would get $20 as a witness.

Q And does that include your appearance here on Saturday at Mr. MacDonald's office?

A I never queried him on that particular single point.

Q You were here on Saturday?

A Fine. I was here on Saturday.

Q In Mr. MacDonald's office?

A Yes.

Q Not in Court?

A Not in Court, no.

Q Now, when was the first time you sat down to talk to Mr. MacDonald?

A I don't know. I think it was maybe a couple of

months ago. I don't remember. I don't remember. I don't have any data in front of me right now to find out when.

Q Well, do you recall the conversation you had in 1968?

A Yes, because I have information in front of me that refreshed my memory.

Q Did you recall the first conversation you had with Mr. MacDonald?

A No.

Q How about the second conversation?

A I don't recall--no. I don't recall exactly what was said at any particular conversation, the first, second, third, fourth or whatever conversation it was. Maybe generally on an overall. That's about all I can tell you. I think he asked me originally some time to identify certain documents, and that's about--he also asked me for my files on Mr. Leonard and the corporation--his corporation and things like that, which were delivered to him.

Q When was that?

A Several months ago, I think.

Q Would it be February of 1974?

A It could be. I couldn't--I don't remember.

Q You don't recall?

A I think it was much too early at that time.

Q I beg your pardon?

A I don't remember, but I can't tell you. I think he served me with a subpoena requesting the records, and that's somewheres in the record, so you can check that out.

Q Did you testify in the grand jury, sir?

A No.

Q When you talked to Mr. MacDonald, did he take notes of your conversation?

A I didn't examine what he was doing or how he was doing it, no, I didn't. I know, as far as I know, he did have one of these secretaries taking down all the information.

Q Mr. Leskowicz, my question is, when he talked to you did you make notes on paper?

A He may have been writing on a paper, yes.

Q Did he or didn't he, do you remember?

A I didn't examine what he was writing. He might have been doodling. I didn't know what he was doing.

Q How big is Mr. MacDonald's room?

MR. MAC DONALD: Judge, I think we would lodge an objection to any questions along this line. There is an appropriate factfinding procedure, if there is an issue in this respect. We didn't come to the bench, as we have been doing, in between direct and cross.

MR. TIGUE: Fine. May I approach the bench?

(At the side bar.)

MR. MAC DONALD: I have supplied the Court with 3515A prior to this witness' taking the stand, and it constitutes the usual set of my notes. The Judge can determine whether they were doodles, sir. I make the same representation in that respect as I have previously. The top page I wrote this morning, after Mr. Tigue told me that he was resting and before Mr. Leskowicz arrived at the courthouse. This other one I wrote on Saturday, Judge. The bold felt markings Mr. Tigue communicated to me over the telephone about Mr. Leskowicz's diaries. The other

notes are notes to myself in the course of the discussion on Saturday. The third page, my recollection is, were reminders to myself to ask the witness certain questions, and the subjects indicated. The final page is the same thing.

THE COURT: Mr. Tigue, I don't see anything here.

MR. TIGUE: I am particularly interested in there were any notes, signed or not. Even if it were one or two words, signed or not, I think it would be substantially verbatim. I draw your Honor's particular attention to this portion of the notes, and I really would like very much to have Mr.MacDonald -- not just on the 3500 material, but on general principles, if there's anything the Government has in its possession.

For instance, Mr. Laski testified that he and Leonard and Leskowicz had a conversation about the UCC contract. I am now given to believe it is this witness' position that he never attended any such meeting. That hasn't been conveyed to me.

The Government also said that they know their obligations under Brady versus Maryland. By golly. I can't get any of that information. I don't believe the witness would testify to that.

Also, your Honor, if there is anything there

that would help me on that issue that becomes a central issue on the case as to his authority or lack of authority. He was interviewed by 17 agents, two lawyers from the Internal Revenue Service, and the Department of Justice and subjected to Department of Justice review on this, and also interviewed by Mr. Mac Donald many times, and I can't get a single scrap of paper.

MR. MAC DONALD: I think the record should reflect with respect to the latter suggestion by counsel that he has received previous to the opening of trial, memoranda of conferences from every agent with the exceptions I will note in a moment, who ever saw Leonard face to face in the company of Leskowicz.

MR. TIGUE: That's true. I lost my head on that one.

MR. MAC DONALD: There's a June and July 1972 memo which Mr. Tigue has been provided with and another -- we gave you the original conference memo with Louis Abrams. And we gave you the Department of Justice memo in respect of Mr. Leonard's statements at that meeting. I will look at it again in respect to Mr. Leskowicz's statements. Aside from those, I don't know of any others that exist in the Government's file.

MR. TIGUE: It seems unbelievable to me that in

eight years or seven years nobody asked this man if he signed the returns.

THE COURT: Mr. Tigue, the top sheet here of 3513A is not 3500 material in that it wasn't made contemporaneously with the discussion, but I will say to you, it relates as follows. This is Mr. MacDonald's writing this morning, what was told to him on Saturday, is that right?

MR. MAC DONALD: Yes, sir.

THE COURT: He says "Discussed with J.D.L. and he said 'leave out.' I erased."

"Thursday 8-14, J.D.L. telephoned, 'sign our names as I am leaving.'"

MR. MAC DONALD: That stands for "for".

THE COURT: Yes. "I am leaving for beach and can't wait. No check needed."

I have given it to you as a matter of discretion here. I think it is consistent with what the man said.

That is the only thing that could conceivably appear in terms of 3500 material, and I see no inconsistency whatsoever.

MR. TIGUE: I see one already, your Honor. I thought this was a face-to-face meeting, and apparently it was a telephone meeting, where he didn't see the tax return in question.

THE COURT: No, I understood him in direct testimony to say it was over the phone.

MR. MAC DONALD: I don't know if I heard what I intended or --

THE COURT: I think he said he called Leonard and Leonard said, "Sign it, I am going to the beach."

MR. TIGUE: Your Honor, with respect to the $20 that I brought up here. I called Mr. MacDonald's office one day when Mr. Leskowicz was coming in and I was going out and there was some discussion about the expense voucher and how he was going to get paid for it and I don't believe what he just said is completely accurate, and I would request the production of the U. S. attorney's copy of the expense voucher, because payments are not authorized by law, your Honor. There is no authority in the law as far as I understand to give anybody $20 for anything except appearance in court or before a grand jury.

I think it is improper and I would like to know very much the details of it so it can assist me in cross examining the witness.

MR. MAC DONALD: There are no expense vouchers. None have been signed by me or issued by me except only two, and they each relate to other witnesses, but I think I am accurate in saying there are none.

MR. TIGUE: You have nothing to say with respect to his testimony that he was promised $20 a day?

MR. MAC DONALD: No. I don't have anything to say on that score.

MR. TIGUE: Thank you.

(In open court.)

BY MR. TIGUE:

Q Did you tell Mr. MacDonald that Mr. Leonard called you on the telephone on August 14, 1969?

A I called him up and told him that we had his tax return, we are ready to have his tax return, and we will have it sent over to him, and he said he was leaving.

Q This is the morning or the afternoon, sir?

A Probably called him in the morning and said it would be ready sometime in the afternoon.

Q And he said he's going away to the shore and you should sign them?

A That's right.

Q The truth is that Mr. Leonard never saw that income tax return prior to the date you sent it out, is that right?

A That's true.

Q As a matter of fact, he didn't even know you sent it out until sometime in September when he got a notice

from the Internal Revenue Service, is that correct?

A No, he got it, I believe, the following Monday when he returned from the shore. He returned from the shore that day.

Q Did he call you up and discuss it with you?

A No.

Q You recall that?

A The only thing that I would say is that looking at this particular thing, at sometime, at a later date, and I believe he got a notice in September of 1969, where the Internal Revenue informed him that there was a difference in his liability I think of some $60 and which he said, "Ed, you goofed" and we rechecked the thing out and said "Okay, so we made a slight error", and they adjusted the amount that was applied to his 1969 estimated tax.

Q May I see Government's Exhibit 80, please.

You are referring to Government's Exhibit 80, the page which is numbered 1748, and it read,"Ed, who goofed, J.D.L."

A Yes.

Q And did Mr. Leonard ask you what this was all about, that the tax return had been filed without him seeing it?

A Mr. Leonard knew that the tax return had been filed. He knew the amount. He compared it with the

copy of his return, because there was a slight difference. We recomputed the thing, because we felt we had made a mistake of $59.37 on the tax liability.

Q You knew there was a mistake because the Internal Revenue Service sent him a notice?

A Yes.

Q And he called you up and said, "Ed, what's this all about?"

A I don't believe he called me up. I believe this is a copy of what he sent me.

Q What did you respond to the question of who goofed?

A We have calculations on the bottom of this particular exhibit, in which we had refigured the thing out and we determined that the Internal Revenue was correct, and that the differences in the tax was $59.37.

Q Isn't that the first time you ever discussed that tax return with Mr. Leonard after you sent it out?

A Probably yes.

Q The fact of the matter is that you were terribly rushed around that period of time, weren't you?

A What period are you talking about?

Q I am talking about August 14 and August 15, 1968?

A Yes, I had just returned from a trip somewheres

around the end of July, an extended trip, and I was back-logged, correct.

Q And actually it was you who had requested a second extension that year, was it not?

A My office had requested the extension from June up until August.

Q And one of the reasons was because you were very busy with Internal Revenue Service and other business, is that right?

A I believe thatis -- my partners were handling the matter in the office at that particular time.

Q And the income tax return was prepared on August 14th, was it not?

A No, it was prepared sometime during that particular week by one of the men in my office.

Q And it is dated in the lower righthand corner, August 14th?

A That's when it was finished, yes.

Q And at that time you simply couldn't locate Mr. Leonard, could you?

A No.

Again, we discussed this matter with Mr. Leonard earlier, talked to him about these things. We had, I believe, rough numbers as to where the thing sat, not

exact numbers, where his liability sat, and we determined that there was to be a refund.

Q Didn't you run out of time; the tax return was due on August 15th, is that correct?

A That's correct, sir.

Q And you couldn't find Mr. Leonard on August 14th or the 15th, right?

A No, sir.

Again, I will tell you, we talked to him earlier, we discussed this particular point, especially the LaPort matter, with him, because this was completed, and this is when he decided, "Okay, I can't wait for you to run this particular return" because it takes a couple of hours for it to be run through our particular process, and he says, "I am taking off for the shore, and sign it," and that's it -- period.

Q Who is the "we" that talked to him. You said, "We" talked to him.

A I identified my company. I talked to him. All right?

Q And you notice that you wrote the numbers on the tax return with an 8- and a 15- and a 69?

A I don't remember --

Q It's before you. Would you take a look at it,

sir?

A Okay.

Q That's not your common way of writing numbers is it?

A It's how I feel on a particular day. It may be.

Q The way you always write numbers is that you put a slash in between numbers?

A Have you got any of that --

Q Well, do you remember?

A I don't remember.

I write them this way and that way, all kinds.

Q And I suppose Mrs. Leonard told you you could sign her name?

A I never spoke to Mrs. Leonard.

Q You forged her name on the tax return?

THE COURT: Objection sustained.

Q Did Mrs. Leonard sign her name on the tax return?

A No, I talked to Mr. Leonard. I talked to Mr. Leonard. He said, "Sign both names."

Q You are a certified public accountant?

A Yes.

Q And you know it is proper for the taxpayer and the accountants to sign the tax return?

THE COURT: Sustained.

Q Do you recall signing any other tax returns for Mr. Leonard?

A I think it must be very, very unusual when I did sign something like that, and I don't recall any particular time when I did sign any others.

Q Did Mr. Leonard give you authority to sign any other tax returns, ever?

A I don't recall.

Q Maybe yes, maybe no?

A He may have -- oh, I don't recall.

Q Are you familiar with an IRS form called a power of attorney?

A Which one are you talking about?

Q Do you know what the term "power of attorney" means?

A I know what a power of attorney is. There are several of them that the Internal Revenue have. I want to know which you are talking about.

Q Did Mr. Leonard give you a power of attorney to sign his name to a tax return?

A This particular return?

Q Any return.

A No -- he did, yes, technically, yes. He gave me

general powers, I think, on 4848's, whatever the numbers are, which are more or less general powers, which I could sign if I wanted to, I believe.

Q And when did he give you those, sir?

A There are several of them that ran from the year 1965. I don't know. I don't have any record on that.

Q Is it your testimony that Jackson Leonard gave you power of attorney to sign this return?

A Not this particular return, no.

Q So with respect to this particular income tax return you had no power of attorney?

A No, just verbal, verbal authorization.

Q And you say you made handwritten notes somewhere as to what you did?

A On the original transmittal letter and a copy of the return which was sent to Mr. Leonard at the time when this thing was signed and filed with the Internal Revenue Service.

Now, Mr. Leonard should have a copy of that.

MR. TIGUE: I move to strike that, your Honor.

THE COURT: Strike it out.

Q Take a look at Defendant's Exhibit AO, if you would, Mr. Leskowicz. Is that what you were talking about?

A This is what I am talking about.

Q Read to the jury your handwritten note on that, would you please?

A There is none on there.

MR. TIGUE: I offer in evidence, your Honor.

MR. MAC DONALD: On the voir dire, your Honor --

THE COURT: Yes.

xx VOIR DIRE EXAMINATION

BY MR. MAC DONALD:

Q Is this the ribbon original that has the preliminary or the Xerox. Can you tell?

A It's a Xerox.

Q You will have to speak up.

A This is a Xerox.

Q And what is the common practice in respect of sending out a typewriter original or a Xerox?

A We always send originals. We don't send Xeroxes. There's holes from the binder in here which should not appear on the original.

MR. MAC DONALD: I am not certain the jury heard. The witness says apparently there are holes in the Xerox from a three-ring binder.

We would object, in the absence of the original, to this coming in. We don't object to the absence of the original, but we would like to look at the

original.

Is that objection sustained, your Honor?

THE COURT: I think you have got to lay a little better foundation for this particular piece of paper.

MR. TIGUE: I will withdraw that one, your Honor.

xx BY MR. TIGUE:

Q Would you take a look at Defendant's Exhibit AO-1, sir, is that the ribbon copy?

A That's the ribbon copy.

MR.TIGUE: I offer in evidence, your Honor, as Defendant's Exhibit AO-1.

MR. MAC DONALD: No objection.

THE COURT: Received.

xx (Defendant's Exhibit AO-1 for identification, received in evidence.)

MR. TIGUE: Does your Honor wish to see it?

Q Mr. Leskowicz, please read to the jury your handwritten notes on this, please.

A There is no handwritten note on it.

Q Now, there are forms 872 which the Internal Revenue Service has from taxpayers, is it not?

A Correct.

Q And did Mr. Leonard ever give you authority to

sign any of those?

A I don't recall.

Q Will you take a look at Government's Exhibit 2 in evidence? That's the tax return before you. There are some 872's attached thereto. Would you tell us whether or not he authorized you to sign any of those?

A These particular ones are signed by Mr. Leonard. I don't make a practice to sign these.

Q Is it your practice to sign income tax returns for taxpayers?

A Only under very, very unusual circumstances.

Q And why is not that practice a broad practice, sir?

A This is the way it works.

Q That has nothing to do with propriety or impropriety?

A I don't think so.

Q Sir, I can't hear you.

A I don't think so.

Q Why is it you don't sign all tax returns for all taxpayers?

A Because the taxpayers should sign their own tax returns unless there's something usual about the particular time when it is supposed to be signed.

Q This tax return was due on August 15th, right?

A That's correct.

Q And do you recall saying on January 2nd, 1975 that you have no recollection of how the tax return got to Mr. Leonard except that you assumed his secretary picked it up?

A I don't, sir.

Q You didn't say that?

A I don't recall saying it.

Q What did you say on that subject?

A Normally the tax returns are delivered to Mr. Leonard or to the taxpayer.

In what way, through the mails, maybe hand delivered, maybe they come and pick them up. How it happe happened in one particular case, I can't tell you.

Q Now, you say your recollection is refreshed.

What documents did you look at to refresh your recollection, sir?

A The original or this photocopy, or whatever this happened to be, of Mr. Leonard's tax return.

Q What else, sir?

A That's all.

Q Once you saw your name on there, you said, "I signed it."

A Certainly. I've never seen this before until Mr. MacDonald showed it to me in his office on Saturday.

Q Mr. MacDonald asked you why you had concealed this from him?

A Concealed what?

Q The fact that you had signed the tax return?

A I didn't conceal anything.

Q Did Mr. MacDonald ask you that question in words or substance?

A No, he did not.

Q How long were you here on Saturday, sir?

A Maybe three hours, four hours.

Q And --

A I think it is down on the book. You can check it out.

Q And did the discussion center around the signing of the tax return?

A Primarily on this particular thing and the report.

Q And that went on for three hours, approximately?

A Approximately.

Q And did you have there Mr. Leonard's expense vouchers so that you could make sure you knew where Mr. Leonard was, before you testified this morning?

A Well, I would say that Mr. MacDonald did show me some expense vouchers of Mr. Leonard's.

Q And that was an additional document that you used to refresh your recollection, which you didn't tell us when I asked you --

A He also pointed out to me that the 14th happened to be on a Thursday and the 15th happened to be on a Friday.

Q Do you remember I asked you what documents you looked at to refresh your recollection?

A You bring them up and I'll tell you yes or no. I don't remember. I don't remember these particular kinds of things.

Q I wasn't there on Saturday.

A Okay. Fine.

Q What else did you look at to get the dates

straightened out?

A That's about it. I saw some of the papers. I saw some La Porte balance sheets and P & L's and financial statements.

Q And did you --

A We looked at some other stuff that I had on the file of La Porte. That's about it.

Q On the subject of expense vouchers, did you and Mr. MacDonald sit down to try and determine where Jackson Leonard was on August 15, '69?

A When I looked at the calendar, knowing where Jack usually spends his weekends, and I've had my experiences with him in prior periods, that he always takes off on an early weekend in the summer time.

Q Then you came to that conclusion after you looked at his expense vouchers and you saw that there was no expense voucher for the 15th of August 1969, right?

A Well, there was no expense voucher on the 15th.

Q And did Mr. MacDonald tell you what your calendars indicated for that year, as to where you were and what you were doing?

A I didn't have my calendar. I think Mr. MacDonald called up your office and asked them for some dates.

Q And did Mr. MacDonald tell you those dates?

A He put them in front of me, different dates for different things to happen, where I had them marked on my calendar.

(Pause.)

Q Mr. Leskowicz, take a look at Defendant's Exhibit AP, if you would, sir, and tell us if you can identify that.

A That's my calendar.

Q And it covers the period August 1969?

A That's correct.

MR. TIGUE: I offer in evidence the page which is indicated as August '69, Defendant's Exhibit AP.

MR. MAC DONALD: Without prejudice to our offering the balance in redirect, we have no objection to this single month.

MR. TIGUE: I am interested in August 1969, your Honor. That is my offer.

THE COURT: Come up.

(At the side bar.)

THE COURT: Mr. Tigue, in order that Mr. MacDonald is not shooting in the dark as to future proposals he may want to make, what is the purpose of this offer?

MR. TIGUE: The purpose of the offer is to show that on every day in the month in August he has appoint-

ments in various things he has worked on. On August 15, the day he signed the tax return, there is no entry whatever. I submit, your Honor, that he signed it without ever having discussed with Mr. Leonard that tax return.

I think this tends to show it. It shows that he worked on the return -- well, I don't know that it shows that. I see the name Laski appears on the 14th. It shows that he was taking off perhaps on August 15, and that for his own convenience he signed that return and pre-dated it and mailed it to the Internal Revenue Service without the authority of Mr. Leonard.

If your Honor would just observe -- your Honor, my goodness, I can't imagine what is more relevant.

THE COURT: I agree with you that, if you could establish that, it would be relevant. I'm not so sure that this calendar permits you to go as far as you seem to want to go with it.

MR. TIGUE: One date in the month he took a trip.

He took a three-day weekend himself.

THE COURT: How do you know? Because there is nothing on the 15th?

MR. TIGUE: I wanted to ask him about that and indicate if he himself was not in the office that day and

that he post-dated the tax return. And I think that tends to support my position.

THE COURT: I would certainly permit you to ask those questions.

MR. TIGUE: It also talks about Mr. Laski that month. I submit, if he wants to offer a month on his portion, he has an obligation to show the relevance of it. I think I've shown the relevance of my month.

THE COURT: At this point you want to show this for the purpose of showing that Laski is in there and that August 15 is a blank box? You may have the month of August and if Mr. MacDonald wants to show there are other blank boxes or other relevant entries having to do with those, I'll await the proposal.

MR. TIGUE: Thank you, your Honor.

(In open court.)

(Defendant's Exhibit AP for identification was received in evidence.)

BY MR. TIGUE:

Q Would you take a look at your calendar for August of '69 and could you tell us if there is an entry in the box marked August 15, 1969?

A Nothing.

Q None?

A It appears a blank, total blank.

Q Were you yourself on a three-day weekend that weekend, sir?

A No. I couldn't take off that particular time. I was backlogged with any number of things that I had to do and I'd say that is just a day that I kept on that so I tried to catch up with things.

Q Do you know that on every other day during the month there is something filled in the box?

A That's correct. For the 15th of August I would say, as for the 15th of most of my months, it should be on that, I would say, in most cases. But the 15th I would say I usually try to keep on that because I got to get things out of the office.

Q And you keep notes on your calendar as to when you have your appointments and when various oblivations you have ~~are~~ due?

A No. Generally they are just sort of memorandums, as to when things probably will happen; or, if I do have an appointment, it is just the initial date is on here. It may come into being, it may not come into being.

Q You had no appointments on that day, that month, is that right?

A That's right.

Q And you have no question but that you were in the office that day?

A That's right.

Q And the return was finished on August 14, sir?

A That's correct.

Q Could you tell us, please, why you dated it the 15th?

A Because that's when it went out, the 15th.

Q Well, you finished it on the 14th --

A Fine. I may have finished the return on the 14th. That doesn't mean I've got to rush out and do everything right away. I may have been working quite late that particular night and that was just put off until the next day. There was no need of getting it out on the 14th.

Q You finished the tax return on the 14th, right?

A Right.

Q And you claim you called Mr. Leonard and he said he wasn't going to be around, yes?

Yes or no, please.

A No.

THE COURT: Mr. Tigue, we have had this conversation twice. So you can't sort of --

MR. TIGUE: I am not attempting to go over and over it. I am trying to get the date.

THE COURT: I know. But the question was not framed properly. Reframe it, please.

MR. TIGUE: I apologize. I withdraw it.

Q Did you have a conversation with Mr. Leonard on August 14?

A Yes.

Q And he told you in that conversation, according to you, did he not, that it should be mailed out and signed by you?

A No.

Q Yes?

A The conversation, the gist of the conversation, was this: That we told him we are going to have his tax return ready that particular day but it is going to be late in that particular day to have it ready. And he said he was going to take off for the weekend, and since we knew that there was going to be a refund, there was no need to sign it and get it out of the way. And that was it. He wasn't going to wait for it.

Q And the return was finished on the 14th, right?

A That's correct.

Q And you had it on your desk in front of you after you talked to Jackson Leonard on the 14th, right?

A No.

Q Where was the return when you were talking to Mr. Leonard?

A The return was probably being worked on or being prepared, maybe being checked out. It was down in its final finishing points. And we had told him that it is going to be ready that afternoon.

It was not ready at the time I talked to Mr. Leonard.

Q But it was finished on the 14th?

A That's correct.

Q And you signed the return on the 14th?

A That's correct.

Q And by that time you had had a conversation with Jackson Leonard?

A That's correct.

Q And then yousigned the return on the 15th, right?

A I signed his name and his wife's name on the 15th.

Q But you did that on the 14th, right?

A What was that? What did I sign on the 14th?

Q You signed Jackson Leonard's name on that tax return on August 14 but you wrote down the 15th.

A No.

Q You have a clear recollection of having signed it on the 15th?

A If it is the 15th, it is the 15th. That's when I signed it.

Q Do you have a recollection, sir?

A Based on information I have in front of me, I'd say yes, I signed it on the 15th of August.

Q When the return came back to you in final, you signed it and dated it August 14, right?

A Correct.

Q And you had already had your conversation with Mr. Leonard by that time?

A That's correct.

Q Why at that point did you not write down Mr. Leonard's name and August 14?

A Because I didn't do it. All right? I signed it the next day. I must have been pretty tired that particular day. I just don't do everything all in a hurry. I put that aside. I said that can be done for tomorrow.

Q And at that point you were too fatigued to go to the left side of the paper and write out the words --

A Possibly, yes.

Q Now, in connection with your discussions with Mr. MacDonald on Saturday or any other time, was there any

discussion about your being prosecuted for signing a false tax return?

A No.

Q Was it promised to you that you would not be prosecuted for forgery?

A No.

Q I see you are smiling. Is this amusing, sir?

A No.

Q Was there a promise to you that this would not be reported to the New York Institute of CPA's?

A Nothing was promised.

Q Now, in the various conversations you had with the IRS agents on this case, were you attempting to conceal from them the fact that you had signed these tax returns?

A The IRS agents had this original return. Nobody tried to hide anything from them. In addition to that, I want to point out to you they also got these 872's and they had Mr. Leonard's signature on it, and if they wanted to compare it, they had everything in front of them to take a look and everything they wanted to look at.

Q You wouldn't need an expert to see Mr. Leonard didn't sign those returns, right?

A Right. I don't think you need an expert on that.

Q And did the agents tell you during the course of

their investigation that this 1968 return was a matter of some concern to them?

A No. At the time of the examination of these returns initially up until a certain point, there was no indication that they were ever any concern to them other than a normal type of examination.

The only thing that was disturbing was that they spent an awful lot of time looking at things. But they made no indication that it was an usual examination.

Q When you say "examinations," there were three special agents of the Internal Revenue Service that worked on this case, were there not?

MR. MAC DONALD: I think we are going beyond the scope of the prior statements that may have been made on the subject of signature or authority and we are now branching out into what may have occurred, and that is beyond the scope of the direct.

MR. TIGUE: I am specifically confining my questions as to this matter and his conversation with the agents on this precise matter, and he just said it was a normal examination and I would like to --

THE COURT: All right. Overruled.

Q A normal examination is conducted by a revenue agent, is that right?

A Yes.

Q And in this case there were several special agents, is that correct?

A They appeared on the scene. They made no indication that there was anything unusual about the return other than they were just -- they just wanted to check certain things. Then they disappeared from the scene until Mr. Schulman come up and made specific remarks.

MR. MAC DONALD: Our objection from now on, Judge, is to form, and I think it will be easier if we ask for non-leading questions in this area so that we can control hearsay statements which the witness may be reiterating.

MR. TIGUE: I don't intend to go into the hearsay statements, your Honor. I am getting what --

MR. MAC DONALD: I thought I heard some.

MR. TIGUE: I didn't solicit that answer. I move to strike that part of the answer. The question was whether or not there were three agents involved, and a simple yes or no was sufficient.

So I do move to strike the answer, all except "no."

I would request, your Honor, if the witness can answer the question yes or no, I would appreciate that.

THE COURT: Read the question and answer back.

(Record read.)

THE COURT: Strike everything after "they appeared on the scene."

BY MR. TIGUE:

Q After you signed the return, Mr. Leskowicz, can you tell us what you did with the tax return?

A The original was sent to the Internal Revenue Service and a copy of that return was sent with the original transmittal letter to Mr. Leonard.

Q Now, Mr. MacDonald asked you on direct examination if your only contribution to the return was the signing of it, is that right?

A I beg your pardon?

Q I believe on direct examination Mr. MacDonald asked you about what your contribution was to that return. Would you tell us a little more fully what contribution you made besides signing it?

A Well, this is a return that came out of my office. I went over it and I discussed this particular point at one time--I don't really understand your question. That's why--

Q You had more to do with this return than just sign it, didn't you?

A Oh, yes.

Q You reviewed the return?

A Yes.

Q You are a certified public accountant?

A Yes, that's correct.

Q You went over the work that your subordinates performed on this, right?

A Correct.

Q And the original information that you obtained in part from the books of the company, did you not?

A Well, primarily we obtained the information--there were no books per se from Mr. Leonard in this particular year 1968. The information that was put together was in this particular exhibit here (indicating), and it had Mr. Leonard's handwritten information that he submitted to us.

Q You set up the books for this corporation in--

A There is no corporation. This is his individual tax return.

Q In 1968, Mr. Leskowicz, did you set up the books of the corporation?

A Yes. But--are you talking about the 1968 tax return of Mr. Leonard?

Q Yes, sir.

A If you are talking about the 1968 tax return of Mr. Leonard, there was no books that we set up for Mr. Leonard.

Q Now, did you set up the books for the corporation, Leonard Process Company, Inc.?

A Correct.

Q And it was you who sat down and discussed the information of his corporation in his personal return when you obtained the information originally, right?

A I don't know what you are talking about right now.

Q Where did this information come from, this Government's Exhibit 80 before you?

A This come from Mr. Leonard.

Q Right. And did you discuss it with Mr. Leonard when he gave it to you? Did he give it to you? Let me withdraw the question.

Did he give that to you?

A Yes, I think he did. Yes.

Q And did you discuss it with him?

A Well, we went over items in this particular return. I mean, when you say "discuss it with him," what do you mean?

Q The information, when he gave it to you, did you discuss it with Mr. Leonard, Government's Exhibit 80 that you are looking at?

A That's correct. I'd say at this particular time, when he first gave it to me, I didn't discuss it with him. We just took it and tried to put it together to see if it would make any sense.

Q And when you signed the bottom of the return, you signed a statement which says "This is complete and true and accurate to the best of my information," right?

A Correct.

Q And you also signed on there the name of Sondra Sue Leonard?

A Correct.

Q And was it correct that she had signed it when you signed the tax return?

MR. MacDONALD: That has been covered, I think. Objection.

THE COURT: This is Exhibit 2?

MR. TIGUE: Yes, your Honor.

THE COURT: I think we've been through this.

Q Was the return true with respect to who signed it?

A I don't understand the question.

Q There was a power of attorney attached to that income tax return, was there not, from Mrs. Leonard?

A That's correct.

Q And you signed her name on that tax return, is that correct?

A Yes.

Q So, when you signed the tax return, where it

says, "This is true and complete and correct," you knew it wasn't true, complete and correct, didn't you?

A I--

MR. MacDONALD: I thought we went into the same question.

THE COURT: I thought all the circumstances of his signing these signatures had been explored.

MR. TIGUE: I am referring to the portion where he signed his own name as opposed to anyone else's, your Honor. There is a statement which says it is true and complete and correct, and I am trying to get the state of the return when he did that.

THE COURT: Where he put "Leskowicz"?

THE WITNESS: "Leskowicz, Brower & Driver."

THE COURT: That is a different matter. I thought we were talking about something else.

THE WITNESS: I thought he was talking about something else, too.

Q When you signed "Leskowicz, Brower & Driver" or "Brower & Driver"--

A "Brower & Driver."

Q --it wasn't complete and true to the best of your knowledge, was it?

A It was as complete--

Q With respect to the signatures, Mr. Leskowicz.

A What signatures?

Q The signatures of Sondra Sue Leonard--

A Let's go back to the time I signed this return. That "Leskowicz, Brower & Driver" was signed on August 14th. Okay? The signatures of Jackson Leonard are the signatures that I signed, and "Jackson Leonard" and "Sondra Sue" were signed on the 15th of August.

Q When on the 15th? Do you recall?

A I don't recall the time.

Q After I spoke to you on January 2nd, if you accept that for a moment, did you tell anybody in the world, before Saturday, or perhaps last Friday, that you in fact had signed that income tax return?

A I never knew I signed that return, and the first time I really was quite surprised myself is when I looked at it on Saturday. Nobdy has ever asked me about that before.

MR. TIGUE: May I just have a minute, your Honor?

THE COURT: You may.

(Pause.)

Q The return that we have before us, Government's Exhibit 2, is the last of many drafts, is it not?

A Correct. Many drafts?

Q Right.

A What do you mean by "many drafts"?

Q How many drafts were prepared before the final one was prepared, sir?

A We don't prepare drafts per se on these particular things. We work it out from the original copy. We may have made some changes as we find additional information, make some corrections.

Q The return was finalized, was it not--let me withdraw that.

Do you know if that return was shown to Mr. Leonard's attorneys before you signed it and filed it?

A I don't think so.

Q Are you sure of that?

A I don't--

Q I don't hear you.

A I don't recall whether I showed them on that return. If the return was prepared in August, then it was prepared against a deadline factor there. I don't believe that it was shown to anybody other than the fact that we talked generally with Mr. Leonard as to the numbers and where it happened to fall, and he figured that's about where it should be and it was great.

But he couldn't wait to get--to have that return completed by our office so he could sign it.

Q There was no need to write a check to enclose with that return, was there?

A That's correct.

Q I didn't hear that. Was there an answer?

A Yes. There was no need for a check to file with the return.

Q And therefore you were able to mail it off without needing any additional documentation from Mr. Leonard, is that correct?

A Correct.

Q Could you tell us the date on that "who goofed?" memorandum from the Internal Revenue Service?

A September 26, 1969.

Q And it is your testimony that that was the first time Mr. Leonard ever spoke to you about the tax return nor was that in fact the first time he ever spoke to you about the tax return after you filed it?

THE COURT: I think that has been answered.

A That has been answered. I don't think we had a discussion after I filed his tax return. There was probably no need for it.

MR. TIGUE: I have no further questions of Mr.

Leskowicz.

THE COURT: Redirect.

MR. MacDONALD: May I just look at the calendar, your Honor?

THE COURT: Yes.

(Pause.)

XX REDIRECT EXAMINATION

BY MR. MacDONALD:

Q Mr. Leskowicz, can you identify this entire exhibit as your diary for the year '69?

A This isn't a diary. It is a memo kind of calendar for me.

Q An appointment calendar?

A An appointment calendar.

Q And with respect to April 15th, is that date blank together with what looks like, with one exception, the 14th also blank?

A That's correct.

Q And is that what you thought might appear on the end of the quarter,the 15th and the 14th, for leaving yourself free of appointments to work on returns?

A Normally this is what I try to do. Let's put it that way.

Q Now I would like to direct your attention to

February 11th and ask you if the ballpoint pen entry for twelve noon is in your own hand?

A That's correct.

Q And is the Parker identified there with Mr. Leonard the same one who wrote the opinion of counsel that you identified as Government's Exhibit 107?

A That's correct.

Q And March 17th and 18th contain entries for 2, 3 and 5 respectively, 2:00, 3:00--2,3 and 5 respectively, do they not?

A Are you talking about March?

Q March 17th and 18th.

A They have some dates here, which I never saw there.

Q Mr. Laski's name does not appear on either of those days, is that correct?

A Correct.

Q Does Mr. Laski's name appear on April 16th and 17th together with a notation "IRA Leonard"?

MR. TIGUE: I object to that, your Honor. Improper redirect. The purpose was to show August 15, 1969.

THE COURT: Sustained.

MR. MacDONALD: I know we are going beyond the scope of direct, but I would hope that maybe if I could ask

non-leading questions your Honor would permit this relevant testimony in respect of this exhibit.

THE COURT: Come up, gentlemen.

(At the side bar.)

THE COURT: Mr. MacDonald, how important is this to you? I'll permit it, but I'll give Mr. Tigue an opportunity for further cross examination.

MR. TIGUE: I just wanted the Court to fully understand, which you undoubtedly do, what the Government is trying to do. They attempted to avoid extensive cross examination of this witness on their direct case. They bring him in for rebuttal on the sole issue of whether or not he had authority to sign.

The attempt that Mr. MacDonald is trying to make now is both to the testimony of Mr. Laski. I think that is improper on the redirect examination of a rebuttal witness.

THE COURT: What is the purpose?

MR. MacDONALD: I thought there was a defense exhibit in the nature of an alibi for the March meeting, the dating of the March meeting. That was part of the defendant's defense in this case.

THE COURT: If that is so, this would go to that.

MR. TIGUE: He doesn't rebut the defense witness. He supports him. He says also that there was no meeting on March 17th and 18th.

That's no rebuttal. That is important. I don't need his support, and I do object to it going into the record.

THE COURT: Can't he offer any proof that is appropriate on the question of whether or not there was a meeting?

MR. TIGUE: Why didn't he do it on the direct case?

THE COURT: He didn't. I will give you an opportunity for further cross examination. If he had done it on his direct case, you would have cross examined. If he comes in late, I will still give you an opportunity to cross examine.

Overruled.

(In open Court.)

MR. MacDONALD: I think there was an answer to the last question. I really don't remember. Maybe it will faster to repeat the question to the witness.

BY MR. MacDONALD:

Q Is there an entry indicating an "IRA" for Laski and Leonard on the 16th, the 17th and also the 23rd of

April?

A That's correct.

Q Does IRA have some special significance?

A Internal Revenue Agent.

MR. TIGUE: I'm sorry. For what dates?

MR. MacDONALD: The 16th, 17th and 23rd of April.

Q Is there an indication of an appointment with Mr. Leonard on about May 7th at twelve noon?

A That's correct.

Q And--

A Yes.

Q I direct your attention to the period beginning June 6th. Is it substantially blank through July 7th without any entries of any kind?

A That's correct.

Q Is that the time frame in which you went on the trip that you described?

A That's correct.

MR. MacDONALD: We would have no further examination. We would offer those additional portions of Defendant's Exhibit AP that the witness has identified.

MR. TIGUE: No objection, subject to your Honor's ruling before that it is permissible on redirect.

I stated my objections to that already.

THE COURT: Yes. All right. Overruled.

XXX (Additional portions of Defendant's Exhibit AP in evidence were received.)

X RECROSS EXAMINATION

BY MR. TIGUE:

Q I have one question for you, Mr. Leskowicz. Is it true that you never were present at a discussion between Mortimer Laski and Jackson Leonard where the Union Carbide contract was discussed?

A I don't recall that particular--any discussion on that Union Carbide thing. I believe, if I recall something, I was sitting in the conference office and possibly Mortimer Laski and Mr.--

Q This is to your personal knowledge, sir?

A My personal knowledge? No.

MR. TIGUE: No further questions.

THE COURT: You may step down, sir.

MR. MacDONALD: I thought we were in the midst of getting the best recollection of the witness on something the witness heard, and then I thought the question limiting it to personal knowledge may have cut the witness off in an answer with regard to what he heard, and what he heard was certainly admissible and responsive.

THE WITNESS: I didn't hear anything.

MR. TIGUE: My question was very precise, your Honor.

THE COURT: All right.

MR. TIGUE: Shall I do it again?

THE COURT: No, you need not do it again.

You may step down.

MR. MacDONALD: Judge, I limited my redirect to the notations in the calendar, but I would hope that I could pursue for a moment this witness' recollection of attending a meeting between Mr. Leonard and Mr. Laski, even if he didn't hear what was said or doesn't recall what was said.

THE COURT: All right.

BY MR. MacDONALD:

Q Were you ever present at a meeting in Mr. Leonard's office with Mr. Laski?

A I believe at some particular time Mr. Laski was anxious to meet Mr. Leonard, and we did arrange for a meeting in Mr. Leonard's office.

Q And did you introduce the two men?

A Yes.

Q At that time?

A Yes.

Q About how long did they stay together on that

occasion?

A Probably--I believe it was probably a morning meeting. That's about it.

Q And did you stay in the same room with them or did you go to some other room during the whole of that morning meeting?

A I believe the particular meeting covered two rooms. There is a conference room and there is an adjacent office, Mr. Leonard's personal office, and I stayed in the conference room and there may have been further discussions.

MR. TIGUE: I object to "may have been."

THE WITNESS: That's what I am saying. There may have been further discussions--

MR. TIGUE: I object to that and move to strike.

THE COURT: Let's see what the answer is.

THE WITNESS: I don't recall exactly what happened. There may have been in the other room.

Q Is there any portion--

THE COURT: Strike it.

Q Is there any portion of the contents of discussions between Mr. Leonard and Mr. Laski that you are able to give the jury your best recollection on?

A I don't recall any specific discussions other than general discussions.

MR. MacDONALD: All right. I would like to show you--

(Pause.)

MR. MacDONALD: May we have marked as the next Government's Exhibit this page?

(Government's Exhibit 103 marked for identification.)

Q Please ignore the little pen markings on this Xerox, but tell us if you can identify the handwriting that appears on Exhibit 103 for identification.

A This is my handwriting.

Q And I would like you to read the entry on the top three lines to yourself.

MR. MacDONALD: Withdrawn.

Q First of all, do you recall the day on which and the place in which you made those entries?

A No. I'm surprised I didn't put a date on it. Most of the time I put dates on these things. I don't remember.

Q And the place where you were?

A Probably in my office.

Q And would you read the top three lines to yourself and tell us if your recollection is refreshed in respect of the subject of the Union Carbide contract having been raised between Laski and Leonard in the spring of 1969?

A Yes. I would say that these are the questions

that were raised by Mr. Laski, and I was to talk to Mr. Leonard and ask him--to find out the information.

Q And is one of the entries on those three lines written across the three of them?

A "Was there correspondence?"

MR. MacDONALD: I would ask that these two pages be marked Government Exhibit 104.

(Government Exhibit 104 marked for identification.)

Q I would like you once again to ignore the handwriting on this Xerox, but I ask you if you can identify the handwriting that appears there in its original form.

A This is my handwriting.

Q On both pages?

A Yes.

Q And in respect of the item number 1 at the head of the first page, would you read it to yourself, please?

My question is, does that further refresh your recollection concerning some specific portion of the Union Carbide relationship that was brought up between Mr. Laski and Mr. Leonard?

A Mr. Laski--this is all prior to our meeting with Mr.--the Laski-Leonard meeting.

MR. TIGUE: I object to it. The question on

recross was, "Were you ever at a meeting?" I don't think this has anything to do with his recross examination.

MR. MacDONALD: I think the witness made it clear that this note--

Q Was that note made prior to the meeting that you described?

A Oh, yes.

Q And on reading the note, is your recollection refreshed in regard to the meeting between Laski and Leonard, not what Laski may have asked you independently, at an earlier time?

A I don't recall that meeting, no, sir.

MR. MacDONALD: We offer, then, only the first document, 103 for identification.

MR. TIGUE: May I ask a question on the voir dire?

VOIR DIRE EXAMINATION

BY MR. TIGUE:

Q Take a look at 103. Were those notes taken at a meeting between Laski and Leonard and you?

A No.

MR. TIGUE: I object to them, your Honor.

BY MR. MacDONALD:

Q What is your best recollection as to when those

notes were placed on that piece of paper?

A I believe they were placed prior to any meeting. It was placed at the time in my office when Laski raised certain questions.

Q Were all the notes on there put on at a single sitting?

A No. They don't seem to be. There seem to be all kinds of things on here. I would say there were notes--a set of memoranda that I made up, and then I contacted Mr. Leonard and talked to him about these things, and I think there are things on here--

MR. TIGUE: I object to what is on there, your Honor. It is not in evidence and has nothing to do with the one question I asked.

THE COURT: You are certainly correct.

Q I would like to draw your attention to the matter which is circled in blue in the center of the page and ask you to read it to yourself, not out loud, and ask you if that refreshes your recollection concerning the contents of the discussion that day between Laski and Leonard?

MR. TIGUE: On what day?

MR. MAC DONALD: On that day in the office when he was introduced, as the witness described, that morning.

A On that occasion I recall that particular thing was raised, yes.

Q Tell us what is your best recollection as to how that subject was raised and what was said by Laski and what was said by Leonard in response?

A Mr. Laski wanted in writing an affidavit --

MR. TIGUE: I object to that, your Honor. I asked about the Union Carbide contract. I didn't ask any questions about an affidavit. My question was very simple: Was he present at a conversation between Laski and Leonard regarding Union Carbide? I think that goes beyond the scope of the rebuttal and beyond the scope of the redirect examination.

THE COURT: I agree with you.

What's the purpose of it?

MR. MAC DONALD: The witness had no recollection whatever of the subjects discussed on that occasion and now he's read the note and tells us that his recollection is refreshed, and there was one subject discussed.

May we approach the bench, Judge?

THE COURT: Yes.

(At the side bar.)

MR. MAC DONALD: Your Honor, the defense of alibi, is apparently being profferred here by reason the narrow question which was put to this witness, and the T & E account. Not having the ability to cross examine the person who was doing the traveling, we would hope, it doesn't deprive your Honor of the power to allow us to negate that defense by showing that there was a meeting and that some subject was discussed that Laski recalled, and if this witness cannot recall all the subjects of this morning, he recalls that.

If he had taken the stand and said "We talked about Swiss banks or Catalytic Sales or cash payments" then I would agree that that wouldn't be the defense of alibi. But here he claims it didn't happen.

THE COURT: That he wasn't there.

MR. MAC DONALD: Yes.

MR. TIGUE: I am not walking away from the

affidavit. This is different.

THE COURT: Well, isn't Mr. MacDonald correct that by putting in the expense accounts you are contending the meeting never took place?

MR. TIGUE: I guess that's true.

THE COURT: Didn't you ask this witness whether he was aware of any such meeting?

MR. TIGUE: No. I was very careful. I don't do things carelessly.

THE COURT: What is the question?

MR. TIGUE: The question was, "Did you ever attend the meeting between Laski and Leonard where the Union Carbide contract was discussed?" And he said, he didn't.

Now, my goodness, your Honor, I am trying to try a fairly precise case --

THE COURT: All right.

I will sustain the objection.

MR. MAC DONALD: The objection to the offer of this exhibit --

THE COURT: Is sustained.

(In open court.)

MR. MAC DONALD: We have no further questions.

MR. TIGUE: Nothing further.

THE COURT: Ladies and gentlemen, we will stand in recess until 2:15.

Please continue to heed my admonition that you aren't to speak about the case.

(The jury left the courtroom.)

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

(In the absence of the jury.)

THE COURT: Gentlemen, there were a number of motions made at the close of the Government's case, and, taking them one at a time, I am going to deny them.

I deny the motion to dismiss on the ground that there has been a failure to prove venue as to Count 2.

I deny the motion to dismiss Count 2 on the ground that this is a return of capital, on this record.

The same with regard to the no proof of signing with regard to Exhibits 1 and 2.

The same with regard to no proof of filing.

I deny the motion to dismiss for pre-indictment delay.

I deny the motion to acquit on the ground that there is no appropriate testimony before the grand jury.

MR. TIGUE: I am sorry to interrupt. Does that include the hearsay testimony which I would--

THE COURT: Yes. I find the testimony before the grand jury to have been proper under the circumstances.

I deny the motion to dismiss on the ground that --this is the one made under 6064, and in that regard--no.

It is another section.

In any event, applicable here at various places is a case called United States against Ponder, 444 Fed. 2nd 816 Fifth Circuit, which I think is pursuasive.

So counsel know where they are in terms of the law.

Mr. MacDonald, are you ready to go ahead?

MR. MacDONALD: Yes, your Honor.

We have one witness in the Courtroom, who will take about ten minutes, and I hope the second and third can be put on in succession. They are scheduled to arrive, and I suppose the snow is holding them up.

MR. TIGUE: If one of those gentlemen is related to the chemical analysis, I would respectfully request an offer of proof out of the presence of the jury.

THE COURT: In that connection I have considered this over the lunch hour. I think it inappropriate for Mr. Tigue to aruge to the jury that there was no testing here, where everybody knows there is testing, and obviously I wouldn't think you would aruge that.

MR. TIGUE: Oh, I couldn't argue that. I know it's not true.

THE COURT: So it seems to be it would be wholly appropriate for you to proceed, to spare one witness, that

the Government need not bring anybody on the issue of testing, and you waive the right to aruge that, "Why didn't the Government test?"

MR. TIGUE: What do I get in return, your Honor? Do I get a return there? Do I get in return a stipulation that we didn't put the holes in there?

THE COURT: You have that in any event, and the alternative would be, if you were going to aruge that, which I don't think you were going to do in any event--I have thought about it. It seems to me we are making a lot of argument over a very little. We know that the holes were there, and the Government placed those holes there subsequent to its receipt, but I think the Government does not really want to get into the testing, because the testing showed nothing, and therefore I think it is inappropriate, and I don't think it is appropriate for you to argue to the jury, "Why didn't they test?" And obviously you can't, consistent with your position as an attorney here, because that isn't the fact, and we all know it isn't the fact.

So I think the Government would give the appropriate stipulation, and, Mr. Tigue, we will save one witness and not put on any testing witness, and we would foreswear on the record any such argument, which I think you would be willing to do.

MR. MacDONALD: I always wonder--in my last trial, one of the counsel kept saying that it always takes longer to work out a stipulation than to get a live witness.

THE COURT: I would think this witness would be an appropriate witness if an argument could be made to the contrary. Since an argument cannot be made to the contrary, it seems to me the witness is inappropriate.

MR. MacDONALD: The man who carried it to the lab and saw the holes punched does not have any scientific knowledge at all. I would call him, and that would take no more than five minutes this afternoon.

MR. TIGUE: The Government could bring out or I could bring out that they called the man who only brought the stuff to the lab, and the question would arise, why didn't they put on the fellow who made the test? But we are not required to argue that.

MR. MacDONALD: He is available to both sides, your Honor.

THE COURT: Mr. Tigue, would you be willing to go along with my original suggestion?

MR. TIGUE: Yes, your Honor, especially in view of your Honor's view of what is admissible.

MR. MacDONALD: Does that include that the holes were punched for the purpose of subjecting the piece of

paper to a test, although the test results are not before the jury in any form? I think that is the only thing this fellow would add, by telling them that it took place in a laboratory in Washington.

I am not sure I understood the Court in that regard. That is why I stood up.

MR. TIGUE: I think the jury might draw the inference that it is like a lie detector test, that the results would be terrible for Mr. Leonard, but for some legal technicality the results were inadmissible. I think that is terribly unfair.

THE COURT: Yes. I think I will leave the stipulation that the holes were put in by the Government subsequent to its receipt.

MR. TIGUE: And I am not going to say anything about it.

THE COURT: When the exhibit was received from the Leonard Process Company, and that's it, and nothing as to why.

MR. TIGUE: May I read into the record that Defendant's Exhibit AR is the envelope containing all the slides that were offered in evidence?

THE COURT: Very good. That will be received.

MR. MAC DONALD: I call Mr. Roderick McLeod.

XX

R O D E R I C K M C L E O D, a Government witness, called in rebuttal, being first duly sworn by the Clerk of the Court, testified as follows:

MR. MAC DONALD: May I proceed, your Honor?

THE COURT: You may.

xx

DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mr. McLeod, will you tell the jury what your current occupation is and where you practice that occupation?

A I am the representative for North America Australia and New Zealand Banking Group. Their office here is located at 63 Wall Street. Their headquarters are Melbourne, Australia.

Q When did you assume that current position?

A I came here on the 30th of July, 1972.

Q Previous to that, were you directly employed at one or more of the branches of the Australia and New Zealand Banking Group in Australia?

A Yes, I was employed at their headquarters in Melbourne.

Q Will you tell the jury when the banking group's offices were initially opened here in New York?

A 9th December, 1968.

Q Will you tell us what practices and procedures were employed after 9 December '68 in respect of international transfers of funds by the Australia and New Zealand Banking Group, Limited from Australia to New York?

MR. TIGUE: Your Honor, I object.

(At the side bar.)

MR. TIGUE: I object to this as improper rebuttal testimony. Apparently it's going to the facts of the loan transaction which Mr. Leonard engaged in in 1968. In my case, your Honor, I didn't touch on that point at all, and I think that this is an imporper witness for that is rebutting something that hasn't been introduced in evidence.

MR. MAC DONALD: I ask the Court to take notice of the testimony of Egan. In each case he objected to the Australian Bank Limited and New South Wales as being potential corporate banks.

This witness will testify precisely what their corporate relationships are and also what the international fund transfer situation is as far as his bank is concerned.

The matter was injected in the cross examination of Mr. Egan, and we would ask the Court's allowing us to let the jury have the facts with respect to what that bank does concerning its corporate relationships in Switzerland and

the transfer of funds from Australia to here.

MR. TIGUE: Your Honor, I think that is grossly unfair. After the Government knows I rested without calling the defendant, they are attempting to prove that rebuttal case something which they could have proved in the case in chief but decided not to.

It's a typical case where the Government tries to hold back evidence for the cross examination of a defendant and puts it in in rebuttal.

I was outraged that I had to make the objection that this witness could be called for that of showing the jury that I would object to his testimony.

What Mr. MacDonald says is true, as to what the cross examination involved. Mr. MacDonald knew very well--he had the file of the First National City Bank for ages as to what banks Mr. Leonard was transacting business with. There's no surprise. They could have called this man last Friday and decided not to. Now they want to take advantage--may I finish--

MR. MAC DONALD: You have the testimony right here.

MR. TIGUE: Yes. The Government was putting in its direct case.

Now they have the benefit of knowing Mr. Leonard

is not going to testify and they can bolster their direct case. I think that would be the most unfair of all procedures.

THE COURT: Mr. MacDonald, why wasn't this man called before?

MR. MAC DONALD: Your Honor, the objections of counsel to each point would have extended the Government's case forever. This man was subpoenaed for this morning. The subpoena was prepared and issued before you told me Mr. Leonard wouldn't testify.

I think for Mr. Tigue to argue --

THE COURT: He should have been here, because this is no testimony --

MR. MAC DONALD: There were additional questions, Judge, on page 405 -- I think it might be highlighted in yellow, Judge.

MR. TIGUE: I was equally unsuccessful with Mr. MacIlwain.

MR. MAC DONALD: It wasn't for our case in chief.

MR. TIGUE: No.

THE COURT: I don't think there's anything in the record that shows the Australian banks have any Swiss connections of any kind. I may be wrong about it, but there's no proof whatever --

MR. MAC DONALD: Judge, this witness will testify with respect to the Australian and New Zealand Banking Groups operating under instructions of the Australian Reserve Bank, which requires a license to support funds out of Australia when they are loan funds and in addition that the Banque Cantonale de Zurich couldn't be employed, so far as his bank is concerned, to transfer funds, that his bank if it were coming to New York, typically would use Chase or City, where they have deposit accounts, and even if the person asking for the transfer asked that it be direct from Zurich, that the Banque Cantonale doesn't have a deposit account with relation to the Australian bank.

I am sure that Mr. Tigue is going to argue to the jury that the affidavit is not false because of the disclosure of these funds.

If the Government didn't call such a witness, the jury should hold that the Government's failure to call him when the information was available here in New York, would be a factor that would go against the Government. We are trying to carry our burden. This issue was injected into the case last Thursday. I didn't have a chance to focus on the several questions until over the weekend.

It really is in the nature of defensive evidence

that we are offering, not part of our case in chief. I ask leave of the Court to give the jury a brief description of the transfer process. I believe it is in your Honor's discretion to permit that proof.

MR. TIGUE: Suppose I had rested, your Honor, at the end of the Government's case. The Government would be coming in to rebut something I can't prove. I don't think it is fair. Mr. MacDonald has such an enormous amount of evidence in this case, to fall into what I would regard as error on this issue, because I can't put in a single thing in this case -- he is not rebutting anything.

MR. MAC DONALD: You asked McIlwain if there was an introduction of Leonard's company to any of those banks.

MR. TIGUE: What is this rebutting?

THE COURT: He wants to show that this bank wouldn't have sent anything through Banque Cantonale de Zurich.

MR. MAC DONALD: It was impossible in its relatinships to have used such a means.

MR. TIGUE: That's not the point, your Honor. The point is, your Honor, he is a rebuttal witness. For goodness sake, I was very careful not to put anything into my case about Swiss banks or Australian banks. To be con-

fronted now, after I have concluded my case -- this should be part of the Government's case in chief. If I had rested he couldn't call this witness. I didn't rest. I called two witnesses. One said he didn't sign the tax return and the other said there were no other expense vouchers. This is improper procedure. He has no right to do this. He can put on anything he wants now because Mr. Leonard is not taking the stand.

MR. MAC DONALD: I thought that usually, as a matter of convenience to a witness when the cross examiner goes beyond the scope of direct, we don't foreclose and make the witness come back.

I asked no questions about introduction to Australia.

MR. TIGUE: You asked him about whether or not Mr. Leonard had been in that bank for a number of years. He said what kind of customer was Mr. Leonard, and Mr. McIlwain said that he was a very valued customer.

THE COURT: Ladies and gentlemen, we are going to stand in recess for about ten minutes.

(Recess.)

THE COURT: Mr. Tigue, I understand you wanted to argue this point a little further?

MR. TIGUE: I did, your Honor, before your Honor got a chance to decide.

First of all, I would stand by my original position on the rebuttal portion, that it is not at all proper rebuttal. But, secondly, it is rebuttal as to a collateral matter.

The matter in this lawsuit is whether or not the income tax return was false in that it omitted certain income. The affidavit and everything about the Australian bank was offered to prove some wilfulness, and in the Court's discretion that evidence got in.

THE COURT: Similar actions we call it.

MR. TIGUE: Yes, your Honor, similar actions.

Now, on the cross examination of a Government witness for the first time the questions are asked about what banks, because the Government raised in the affidavit, by putting the affidavit in evidence, that it was an Australian bank.

Through Mr. McIlwain they said on direct examination, "What kind of customer was Mr. Leonard?" And he said he was a very valuable customer who had been with the bank for a number of years.

I think on cross examination I had a right to probe the nature of the customer he was.

We are now into what I regard, your Honor, as a wholly collateral area, as to what the financial procedures are of the Australian bank. It seems to me that nothing could be more collateral from the charges that are contained in this indictment. It came out in the cross examination of the Government's witness during the Government's main case, a subject which I believe at least was opened up by Mr. MacDonald.

During the course of presenting the defendant's case here there was no evidence about any of that, and it seems to me that it is not only improper but it is so prejudicial now to go into all the banking procedures.

Mr. MacDonald I think felt in this case that there was -- for his own strategy reasons he held back certain evidence which he had hoped to use on the cross examination --

THE COURT: Mr. Tigue, that I don't see at all. That last argument I don't see at all. But go ahead.

MR. TIGUE: Well --

THE COURT: I don't think he held it back for strategy reasons, for reasons I am prepared to state in a minute.

It does occur to me that it might be appropriate to have a dry run with this witness outside the presence of the jury. I anticipate that all that this man is going to say, and maybe he should be excluded from the room while we are having this discussion.

Mr. McLeod, would you just step out in the corridor for one minute here so that no remark that I make will sway your state of consciousness in any way.

(The witness left the courtroom.)

THE COURT: I gather what this gentleman is going to say is in substance that Australia and New Zealand Banking Group Limited does not have banking connections through the Banque Cantonale de Zurich and did not have them in the year 1968. Is that about what he is going to say? That that's not the way they sent money to New York and they did not use that bank to forward money.

MR. MAC DONALD: I think the only difference is that they had a franc, a Swiss franc depository account in some other currency, London pounds but not U. S. dollars, and in order to have effected a U. S. dollar transfer they would have had to use a different correspondent, such as Credit Suisse or some other.

MR. TIGUE: Different in what manner?

MR. MAC DONALD: Different from Banque Cantonale,

to which they could have transferred francs or pounds but not dollars.

THE COURT: That is in substance the same thing.

In other words, to get dollars to this country they would have not used that Swiss bank.

Now, if that's all he is going to say, I regard it as appropriate, Mr. Tigue, and I'll tell you why. You are entitled to know why.

As I read the direct examinations of Messrs. McIlwain and Egan, Mr. MacDonald did not get into this area at all. And at page 402 you started off on something that peaked my curiosity and up at the side bar you said, "I intend to establish through this witness that the bank account referred to in the affidavit regarding foreign banks is this bank in Australia and that they have correspondents in Switzerland."

And through that, having established that, I assumed you would then argue to the jury that this was the $383,000 coming from Australia through Banque Cantonale.

And the same with Mr. Egan. On the cross examination of Mr. Egan it is you that brings this in, making the man really your own witness for that purpose, right at the tail end of the Government's case.

So that Mr. MacDonald is correct to the extent

that this is really part of your case, this subject matter with these two witnesses, and as I read Mr. Egan's cross you ask him the following question:

"Q Have you ever heard of a bank by the name of The Bank of New South Wales of Sidney, Australia.

"A Yes, I have.

"Q And does that bank do business throughout the world, sir?

"A To my knowledge, yes."

Which is enough for you to make the argument that it did business through the Banque Cantonale de Zurich?

The next question was:

"Q Do you know if they have correspondent banks in Switzerland?

"A I don't know."

But that doesn't detract from the usefulness of the transcript for your purpose. Consequently, coming toward the tail end of the Government's case and being in situations where you make the witness really your own, and as you recall I finally cut that off and said, "This is beyond the scope of direct. If you want to bring this man back, you can do it."

MR. TIGUE: I did not.

THE COURT: And it seems to me that there is no

question about what you want to argue to this jury, and the record as you defend it so far would allow it. And therefore it seems to me appropriate to permit this witness to give testimony which if credited would counter what you have established.

For that reason, I will overrule the objection.

MR. TIGUE: It is collateral even assuming everything your Honor just said, which I must, of course. But it seems to me that the matter itself is still collateral, that it doesn't relate to what the issues of the case are, I mean, the matter which is charged --

THE COURT: It relates to establishing whether a similar act is a similar act.

MR. TIGUE: Which I submit that the Government--

THE COURT: And even assuming it is collateral, what then?

MR. TIGUE: Then it is wholly impermissible under any theory. If it is a collateral matter on the rebuttal of the Government's case when the defendant doesn't put in --

THE COURT: If you had a similar act and you in the course of your defendant's case had put in testimony including that similar act, the Government couldn't restore that to its original vigor by further proof rebutting your

proof?

MR. TIGUE: Sure it could have.

THE COURT: That's what I am saying. That's what I think he is proposing to do here, the only difference being that you brought it out on cross examination of witnesses as I see that you made your own.

MR. TIGUE: Okay.

THE COURT: All right.

(Jury present.)

B1
XXX R O D E R I C K D. M c L E O D, resumed.

XXX DIRECT EXAMINATION (Continued)

BY MR. MacDONALD:

Q Mr. McLeod, does the Australia and New Zealand Banking Group, Ltd. have banking and do banking business throughout the world?

A Yes.

Q Would you describe to the jury, please, what banking facilities and relationships your bank maintains in Zurich, Switzerland?

A We have what are termed--

MR. TIGUE: That are maintained now or back in 1968?

THE COURT: You are talking about 1968, I assume?

Q Please direct your attention to the time in 1968, the calendar year 1968, and tell us what your bank's relationships were.

A In answering this question, I can't say specifically what banks we had arrangements with in Zurich in 1968, but I can tell you the nature of it, generally the nature of our arrangements.

THE COURT: Let's be sure, now.

Q Can you tell us when--

The narrowest question of all, your Honor.

THE COURT: Mr. MacDonald, you and Mr. Tigue come up here, please.

(At the side bar.)

THE COURT: This is why I suggested a dry run, because I just don't want to get a lot of general observations--

MR. MacDONALD: He brought with him documents.

THE COURT: If he is prepared to say in 1968 as to which banks they did business with, which is what you told me, that is one thing. But I assume that the bottom line is going to be that in 1968 they did not do American dollar account business through the Banque Cantonale de Zurich.

If it doesn't end up there, then the whole thing is out the window.

MR. TIGUE: I object to this testimony and would ask for at least a hearing out of the presence of the jury as to what the heck he is going to say. I was about to object when he said he doesn't know what happened back in 1968.

MR. MacDONALD: Judge, I think the witness brought with him a document--

MR. TIGUE: Let's take it outside the presence

of the jury.

(In open Court.)

THE COURT: Ladies and gentlemen, I am going to give you a little more exercise. We will excuse you again for about five more minutes.

(The jury left the Courtroom.)

THE COURT: Mr. MacDonald, let's go through this.

MR. MacDONALD: Your Honor, I am trying to inform myself from the record what the answer will be. I don't want to waste the Court's time.

(Pause.)

MR. MacDONALD: If your Honor would like Mr. McLeod to do it aloud on the record, we can do it that way.

THE COURT: All right, let's do it on the record.

BY MR. MacDONALD:

Q All right.

A This is a total record, or an abbreviated total record, of our arrangements with all international banks throughout the world, and I am looking under Switzerland, and particularly under Zurich, to tell you what our arrangements are there.

(Pause.)

Under Zurich, we have arrangements with 3, 6, 9,

12, 15, 18, 21, 24, 25 banks.

Q Would you direct your attention to Banque Cantonale de Zurich?

A Yes.

Q And tell us what the arrangements are with respect to that bank.

THE COURT: You are now talking about today?

THE WITNESS: We are talking about as of today. That's all I can give you.

Q Let me ask you one question. Isn't there a printer's mark on that loose leaf page that you are consulting?

A Yes. But it doesn't tell you very much. It is "27/32," and I'm not sure what it means. It is probably our record of when it was amended.

It was last amended on the 5th of November, on that page, the 5th of November 1974.

Q Are the previous editions maintained here in New York by your group?

A No, no. We destroy the old pages as they are--we run a very small office here and don't have room--

THE COURT: Mr. McLeod, let me put a couple of questions to you.

BY THE COURT:

Q The fact to narrow in on is whether or not your Australia and New Zealand Banking Group, Ltd. would have had a paying relationship to the United States in terms of dollars.

A In terms of U.S. dollars?

Q In terms of U.S. dollars through the Banque Cantonale de Zurich in the year 1968.

A I can answer that categorically in terms of these arrangements. We don't have that now. We would not have had that then.

Q You would not have had it then?

A No.

Q On what do you base the latter statement, that you would not have had it then?

A To my personal knowledge, the arrangements would not have been varied to that extent or in that nature.

Q I see. In other words, you can testify from your own knowledge as a bank officer that the same arrangements as far as Banque Cantonale de Zurich that exist today are those that existed in the calendar year 1968?

A No, I can't categorically say that. But I say what I did say from my knowledge, that the U.S. dollar arrangements tended to increase rather than contract.

So, if we don't have arrangements with the bank now for U.S. dollars, we certainly would not--never did.

Never did have arrangements. It is based on that premise.

Q And you know that from your personal knowledge of the operation?

A Well, I do know that. I've been in this particular side of the business for a very long time and I would be prepared to testify to that.

THE COURT: Mr. Tigue, do you want to examine in this area at all? Because I'll let you examine to see whether you can make this a non-jury issue by your examination.

MR. TIGUE: Yes, your Honor.

THE COURT: If you do not, I will let the jury hear it.

BY MR. TIGUE:

Q Mr. McLeod, you say that is an abbreviated record you have before you?

A Yes.

Q What does "abbreviated" mean? There is more somewhere else?

A Well, each of our forms of arrangements with overseas banks is set out in a form of a document or series

of documents setting out exactly what those banks can do with us and what we can do with them in total form. This is a book which abbreviates those total agency arrangements into a concise form.

Q I see. And could you tell us what your job was at the Australian Bank in 1968, sir?

A In 1968, I was manager of our International Division for New Zealand.

Q And you were in New Zealand at that time?

A I was in New Zealand, yes.

Q And do you have personal knowledge as to what the relationship between the Australian Bank, if I may abbreviate that, and the Banque Cantonale at that time was with respect to dollar accounts, that is, which you really know as opposed to what "must have been" or what "could have been"?

A That's right. I don't have personal knowledge of what the relationship was with that bank at that time or whether in fact we did in fact have a relationship with the Banque Cantonale de Zurich at that time.

MR. TIGUE: Thank you.

BY THE COURT:

Q But you do know--

A The statement I made was if the arrangements

had changed that were in force at that time, they would not have been changed by the elimination of a U.S. dollar relationship.

Q And that you do know from your experience?

A Well, from my own background.

Q From your own personal background in the bank?

A Because, as you probably would be aware, over the years the U.S. dollars has tended, despite its fluctuations from time to time, to become a more important medium of payment, and the banks have tended generally to expand their arrangements of this type.

BY MR. TIGUE:

Q What I don't understand is, does that mean that you know whether or not there was such an account in 1968 or not or if that--

A No. I'm saying that there wasn't such an account in 1968 from my knowledge of what would have been the situation at that time. But, in answer to your more specific question, I can personally and categorically say what the nature of our arrangements were with the Banque Cantonale de Zurich at the time.

MR. TIGUE: I press my objection, your Honor.

THE COURT: Overruled. I'll permit it.

Bring in the jury.

MR. MacDONALD: Your Honor, there is a Mr. Lindsay Hamilton of the Bank of New South Wales, who is in Court, and I don't know if your Honor contemplated a similar voir dire before the jury comes in.

THE COURT: What is this other gentleman?

MR. MacDONALD: He is from the Bank of New South Wales. He is the New York representative of that bank as well, and I hope that he will give testimony of a similar admissible tenor, and maybe your Honor wants to--

THE COURT: Why did you do that at this moment?

Mr. McLeod, may I ask you to step down for a moment?

(Witness temporarily excused.)

L I N D S A Y C H A R L E S H A M I L T O N,

called by the Government as a witness in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MacDONALD:

Q Mr. Hamilton, you heard the testimony of Mr. McLeod in respect of the relationship between his bank and the Banque Cantonale de Zurich. Have you consulted appropriate information sources in your bank this afternoon at my request, and are you able to help his Honor in describing the 1968 relationship or the today relationship and any

departures for 1968 between the Bank of New South Wales and the Banque Cantonale de Zurich?

A I have. To the best of my knowledge, we do not have arrangements now, nor did we have in 1968. However, I must say that due to the time difference between here and there, I was unable to confirm this, because neither Australia nor Zurich are operating now.

Q Will you describe what your basis of knowledge is concerning international banking practices for New South Wales?

A Well, I must say at the outset, to qualify this again, we have arrangements with some 7,000 banks around the world, so even though I worked on the international side for 20 years, it would be impossible to commit this to memory. But I went through our record here today, and I didn't bring the records with me, but we don't, to the best of my knowledge, have any arrangements at all, and whereas we might have limited arrangements, it is highly unlikely that we have arrangements with this bank, the Banque Contonale de Zurich.

THE COURT: I think I will excluse this witness. I sustain the objection to this witness. Thank you.

(Witness excused.)

THE COURT: Mr. MacDonald, how many more witnesses

do we have?

MR. MacDONALD: No more than two, Judge.

THE COURT: Bring in the jury.

(Jury in box.)

MR. MacDONALD: Mr. McLeod, will you resume the stand, please?

R O D E R I C K D. M c L E O D, resumed.

DIRECT EXAMINATION (Continued)

BY MR. MacDONALD:

Q Mr. McLeod, have you brought with you an office or business manual of the Australia - New Zealand Banking Group, Ltd. which constitutes an abbreviated statement of your bank's banking relationships throughout the world?

A Yes, I have.

Q And at my request have you consulted that in respect to the Banque Cantonale de Zurich, which currently appears in that publication?

A Yes. It appears here under the hearing of Zurich, and we do have a formal relationship with that bank.

Q Will you describe your relationship and tell us in what respects if any it varies from those in effect, based upon your knowledge of international practices in your bank, varies from those in effect in 1968?

A Well, the arrangements we have presently with

the Banque Cantonale de Zurich, which is also known as the Zurich Cantonale Banque, we have telegraphic arrangements with them. We may draw on them in English pounds or Swiss francs. We may issue overseas letters of credit, showing them as a drawee bank.

Branches may advise in foreign currency, that is, in this case, Swiss francs, showing the particular bank as the drawee bank in respect of the payment transactions.

The bank may issue drawings on us in pounds--that is, pounds of sterling--or Swiss francs.

The agent keeps a New Zealand drawing account with us. The branch--our branches, that is, branches of our bank, may advise documentary letters of credit received from that bank, and there are certain other special arrangements for which I must go to another page.

Q Is there a United States dollar arrangement between your bank and Banque Cantonale?

A No. Not to my knowledge.

Q Would you tell the jury in what respect your knowledge varies concerning the arrangements with the bank back in 1968, the variations from then to today?

A Well, to my knowledge the arrangements have not varied at all, but I would have to check with our headquarters in Melbourne to verify that.

Q Would you tell us what your knowledge is concerning the opening of U.S. dollar accounts between your bank and other correspondent banks and how over time it has varied?

A Well, would you like to just repeat that question?

Q I am not sure if it was intelligible, myself.

Since 1968, have U.S. dollar accounts been opened by your bank with correspondent branches, and not the reverse or the contrary: closing U.S. dollar accounts?

A To answer that question, there has been a tendency for a number of U.S. dollar accounts being opened to increase during that period.

MR. MacDONALD: We have nothing further, your Honor.

THE COURT: You are talking about the period January 1, 1968 to the present, are you not, Mr. McLeod?

THE WITNESS: That's correct.

THE COURT: All right.

CROSS EXAMINATION

BY MR. TIGUE:

Q Mr. McLeod, you said a minute ago you had to go to another page for additional services. Would you have that with you, sir?